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## JOINT COMMITTEE ON

# INDIAN CONSTITUTIONAL REFORM

[SESSION 1933-34]

# VOLUME I (PART II) PROCEEDINGS

[The REPORT of the Joint Committee [Session 1933-34] win be found in Volume I (Part I).]

[The RECORDS of the Joint Committee [Session 1933-34] will be found in Volume II.]

[The PROCEEDINGS, EVIDENCE, and RECORDS of the Joint Committee [Session 1932-33] will be found in the following Parliamentary Papers of 1933: H.L.79 (I), (IIA, B, C, and D), and (III); or H.C. 112 (I), (IIA, B, C, and D), and (III).]

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# **SESSION 1932-33**

The PROCEEDINGS, EVIDENCE, and RECORDS of the Joint Committee [Session 1932-33] will be found in the following Parliamentary papers of 1933: H.L. 79(1), (II A, B, C, and D), and (III); or H.C. 112(1), (II A, B, C, and D), and (III).]

# **SESSION 1933-34**

## VOLUME I

#### PART I

#### REPORT

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<sup>†</sup> These discussions were held in private and the transcripts of them have been destroyed by order of the Joint Committee, with the exception of the preliminary discussion between the Joint Committee and the Delegates from Ruma on the 6th and 7th December 1933, which was published in Record B1, (vide page 115, Vol. II, Records of the Joint Committee (Session 1933-34).)

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<sup>\*</sup>The Joint Committee decided to consider the Draft Report laid before them by the Lord in the Chair.

† The Joint Committee decided to consider this alternative Part I (Paras: 1 to 42B), in lieu of the Introduction in the original Draft Report laid before them by the Lord in the Chair on 18.6.34.

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#### ORDERS OF REFERENCE

#### HOUSE OF LORDS

#### Die Jovis 23° Novembris 1933

Message from the Commons that they have come to the following Resolution to which they desire the concurrence of this House, viz.: That, before Parliament is asked to take a decision upon the proposals contained in Command Paper 4268, it is expedient that a Joint Committee of Lords and Commons, with power to call into consultation representatives of the Indian States and of British India, be appointed to consider the future government of India and, in particular, to examine and report upon the proposals in the said Command Paper: The said message considered (on motion): Then it was moved, That this House do concur in the said Resolution communicated by the Commons (The Lord Chancellor); agreed to; and a message ordered to be sent to the Commons to acquaint them therewith.

#### Die Martis 28° Novembris 1933

Message from the Commons that they have appointed a Committee to consist of Sixteen Members to join with a Committee of this House, with power to call into consultation representatives of the Indian States and of British India, to consider the future Government of India and, in particular, to examine and report upon the proposals contained in Command Paper 4268; that they have made the following Orders:—

That the Committee have power to send for persons, papers, and records, and to sit notwithstanding any Adjournment of the House.

That the Committee have power to report from time to time. That the Committee have power to report from day to day or otherwise the Minutes of Evidence taken before them and such other records as they may think fit.

That the Committee have power, if the House be not sitting, to send such Minutes and records to the Clerk of the House, who shall thereupon give directions for the printing and circulation thereof, and shall lay the same upon the Table of the House at its next meeting.

That the Committee have power, if they so determine, to appoint one or more sub-committees to take evidence or to consider any matters that may be referred to them.

That any sub-committees so appointed shall have power to send for persons, papers, and records and to sit 'notwithstanding any Adjournment of the House. That any evidence taken by such sub-committees shall be reported by them to the main Committee.

That the Minutes of Evidence taken before, and Records reported from, the Joint Committee appointed in Session 1932-33 to consider Indian Constitutional Reform be referred to the Committee.

That Eight be the quorum.

And to request this House to appoint an equal number of Lords to be joined with the Members of their House: The said Message considered (on motion).

Then it was moved, That a Committee of Sixteen Lords be appointed to join with the Committee of the Commons, as mentioned in the said Message, and that the Lords following be named of the Committee:—

Lord Archbishop of Canterbury. Earl Peel.

Lord Chancellor. Lord Middleton.

Marquess of Salisbury. Lord Ker (M. Lothian).

Marquess of Zetland. Lord Hardinge of Penshurst.

Marquess of Linlithgow.

Marquess of Reading.

Lord Snell.

Lord Reading.

Earl of Derby. Lord Rankeillour.

Earl of Lytton. Lord Hutchison of Montrose.

That leave be given to the Committee to lay upon the Table from day to day or otherwise the Minutes of Evidence taken before them and also such other records as they may think fit; that such Minutes of Evidence and records be printed, and delivered out; That, if the House be not sitting, such Evidence and records shall be deemed to have been laid upon the Table of the House when delivered to the Clerk of the Parliaments.

That the Committee have power, if they so determine, to appoint one or more sub-committees to take evidence or to consider any matters that may be referred to them; that any evidence taken by any such sub-committee shall be deemed to be evidence taken before the Joint Committee.

That leave be give to the Committee to report from time to time.

That the Minutes of Evidence and Records of the Joint Committee on Indian Constitutional Reform laid upon the Table in the last Session be referred to the Committee (The Lord Chancellor); agreed to:

Ordered, That such Committee have power to agree with the Committee of the Commons in the appointment of a Chairman: Then a Message was ordered to be sent to the Commons to inform them of the appointment of the said Committee by this House, to acquaint them with the above resolutions, and to propose that the Joint Committee do meet in Grand Committee Room No. 10, To-morrow, at Five o'clock.

#### Die Mercurii 29° Novembris 1933

Message from the Commons, that they have ordered that the Committee appointed by them to join with the Committee of this House as a Joint Committee on Indian Constitutional Reform do meet the Lords Committee in Grand Committee Room No. 10 this day at Five o'clock as proposed by their Lordships.

#### HOUSE OF COMMONS

#### Wednesday, 22nd November, 1933

Resolved, That, before Parliament is asked to take a decision upon the proposals contained in Command Paper 4268, it is expedient that a Joint Committee of Lords and Commons, with power to call into consultation representatives of the Indian States and of British India, be appointed to consider the future government of India and, in particular, to examine and report upon the proposals in the said Command Paper.—(Secretary Sir Samuel Hoare.)

Message to the Lords to acquaint them therewith.

#### Thursday, 23rd November, 1933

Message from the Lords that they concur with the Commons in their Resolution communicated to them this day, viz.: "That, before Parliament is asked to take a decision upon the proposals contained in Command Paper 4268, it is expedient that a Joint Committee of Lords and Commons, with power to call into consultation representatives of the Indian States and of British India, be appointed to consider the future government of India and, in particular, to examine and report upon the proposals in the said Command Paper."

#### Friday, 24th November, 1933

Resolution of the House [22nd November] relative to the appointment of a Joint Committee on Indian Constitutional Reform, which was ordered to be communicated to the Lords, and the Lords Mcssage [23rd November] signifying their concurrence in the Resolution, read:

Ordered, That a Select Committee of Sixteen Members be appointed to join with a Committee to be appointed by the Lords, with power to call into consultation representatives of the Indian States and of British India, to consider the future government of India and, in particular, to examine and report on the proposals contained in Command Paper 4268.

Ordered, That the Committee have power to send for persons, papers, and records, and to sit notwithstanding any Adjournment of the House.

Ordered, That the Committee have power to report from time to time.

Ordered, That the Committee have power to report from day to day or otherwise the Minutes of Evidence taken before them and such other records as they may think fit.

Ordersd, That the Committee have power, if the House be not sitting, to send such Minutes and records to the Clerk of the House,

who shall thereupon give directions for the printing and circulation thereof, and shall lay the same upon the Table of the House at its next meeting.

Ordered, That the Committee have power, if they so determine, to appoint one or more Sub-Committees to take evidence or to consider any matters that may be referred to them.

Ordered, That any Sub-Committees so appointed shall have power to send for persons, papers, and records and to sit notwithstanding any Adjournment of the House.

Ordered, That any evidence taken by such sub-committee shall be reported by them to the main Committee.

Ordered, That the Minutes of Evidence taken before, and Records reported from, the Joint Committee appointed in Session 1932–33 to consider Indian Constitutional Reform be referred to the Committee.

Ordered, That Eight be the quorum.—(Captain Margesson.)

Message to the Lords to acquaint them therewith, and to request them to appoint an equal number of Lords to join with the Committee appointed by this House.

Committee nominated of,—Major Attlee, Mr. Butler, Mr. Cadogan, Sir Austen Chamberlain, Mr. Cocks, Sir Reginald Craddock, Mr. Davidson, Mr. Isaac Foot, Secretary Sir Samuel Hoare, Mr. Morgan Jones, Sir Joseph Nall, Lord Eustace Percy, Miss Pickford, Secretary Sir John Simon, Sir John Wardlaw-Milne, and Earl Winterton.—(Captain Margesson.)

## Tuesday, 28th November, 1933

Message from the Lords that they have appointed a Committee consisting of sixteen Lords to join with a Committee of the Commons as a Joint Committee on Indian Constitutional Reform, pursuant to the Commons Message of this day.

They communicate that they have come to the following Resolutions, viz.: That leave be given to the Committee to lay upon the Table from day to day, or otherwise, the Minutes of Evidence taken before them, and also such other Records as they may think fit; that such Minutes of Evidence and Records be printed, and delivered out; that, if the House be not sitting, such Evidence and Records shall be deemed to have been laid upon the Table of the House when delivered to the Clerk of the Parliaments.

That the Committee have power, if they so determine, to appoint one or more sub-committees to take Evidence or to consider any matters that may be referred to them; that any Evidence taken by any such sub-committee shall be deemed to be Evidence taken before the Joint Committee.

That leave be given to the Committee to report from time to time.

That the Minutes of Evidence and Records of the Joint Committee on Indian Constitutional Reform laid upon the Table in the last Session be referred to the Committee.

They propose that the Joint Committee do meet in Committee Room No. 10, To-morrow, at Five o'clock.

So much of the Lords Message as relates to Indian Constitutional Reform considered.

Ordered, That the Committee appointed by this House do meet the Lords Committee as proposed by their Lordships.—(Captain Margesson.)

Message to the Lords to acquaint them therewith.

# THE REPORT OF THE JOINT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM WILL BE FOUND IN VOLUME I, PART I.

# LORDS AND MEMBERS PRESENT AND DELEGATES FROM BURMA IN ATTENDANCE AND MINUTES OF PROCEEDINGS OF THE COMMITTEE

#### Die Mercurii 29° Novembris 1933

#### Present:

LORD ARCHBISHOP OF CANTERBURY. MR. ATTLEE, MR. BUTLER. MARQUESS OF SALISBURY. MAJOR CADOGAR. MARQUESS OF ZETLAND. SIR AUSTEN CHAMBERLAIN. MARQUESS OF LINLITHGOW. Mr. Cocks MARQUESS OF READING. SIR REGINALD CRADDOCK. EARL OF DERBY. Mr. DAVIDSON. EARL OF LYTTON. MR. FOOT. EARL PEEL. SIR SAMUEL HOARE. LORD MIDDLETOF. LORD KER (M. LOTHIAN). MR. MORGAN JONES. LORD EUSTACE PERCY. LORD HARDINGE OF PENSHURST. MISS PICKFORD. LORD IRWIN. SIR JOHN WARPLAW-MILNE. LORD RANKEILLOUR. LORD HUTCHISON OF MONTROSE. EARL WINTERTON.

The Order of Reference is read.

It is moved, that the Marquess of Linlithgow do take the Chair.

The same is agreed to.

The Course of Proceedings is considered.

The Committee decide to call into consultation the following representatives from Burma:

SRA SHWE BA, T.P.S.
MR C. H. CAMPAGNAC, M.B.E.
MR. NANABHAI MERWANJI COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.

U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

A preliminary discussion is held on the proposals in the Burma White Paper (vide Second Appendix, Vol I, Part I).

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Jovis 30° Novembris 1933

#### Present .

LORD ARCHBISHOP OF CANTERBURY	MR ATTLEE
MARQUESS OF SALISBURY	MR BUTLER
MARQUESS OF ZETLAND	MAJOR CADOGAN.
MARQUESS OF LINLITHGOW	SIR AUSTEN CHAMBERLAIN
MARQUESS OF READING	Mr Cocks
EARL OF DERBY	SIR REGINALD CRADDOCK.
EARL OF LYTTON	Mr Davidson
EARL PELL	Mr Foor
LORD MIDDLETON	SIR SAMUEI HOARE
LORD KER (M. LOTHIAN).	Mr Morgan Jones
LORD HARDINGE OF PENSHURST.	Sir Joseph Nall
LORD IRWIN	LORD EUSTACE PERCY.
LORD SNELL	Miss Pickford
LORD RANKEILLOUR	SIR JOHN WARDLAW-MII NE.
LORD HUTCHISON OF MONTROSE	EARL WINILRION

#### THE MARQUESS OF LINLITHGOW in the Chair

The Order of Adjournment is read

The Proceedings of yesterday are read

A further preliminary discussion is held on the proposals in the Burma White Paper (wide Second Appendix Vol I, Part I)

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Vanaria 1° Decembris 1983

#### Present .

LORD ARCHBISHOP OF CANTERBURY.	MR ATTLEE
MARQUESS OF SALISBURY,	MR BUTLER.
MARQUESS OF ZETLAND	Major Cadogan
MARQUESS OF LINLITHGOW.	SIR AUSTEN CHAMBERLAIN
MARQUESS OF READING	MR COCKS
EARL OF LYTTON	SIR REGINALD CRADDOCK
LORD KER (M LOTHIAN)	MR DAVIDSON
LORD SNELL	Mr. Foot
LORD RANKEILLOUR	SIR SAMUEL HOARD
LORD HUTCHISON OF MONTROSE.	MR MORGAN JONES
	LORD EUSTACE PERCY
	MISS PICKFORD
	SIR JOHN WARDLAW-MILNE
	EARL WINTERTON

#### THE MARQUESS OF LINLITHGOW IN the Chair

The Order of Adjournment is read.

The Proceedings of yesterday are read

A further preliminary discussion is held on the proposals contained in the Burma White Paper (vide Second Appendix, Vol I, Part I)

Ordered that the Committee be adjourned to Tuesday next at half-past ten o'clock,

# Die Martis 5° Decembris 1933

#### present :

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE,
MR. BUTLER.
MAJOR CADOGAN,
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON
MR. FOOT.
SIR SAMUEL HOARD.
MR. MORGAN JONES,
LORD EUSTAGE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE,
EARL WINTERTON.

The following Delegates from Burma were also present :--

SRA SRWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI
COWASJEE.
U KYAW DIN,
MR. K. S. HARPER.
U CHIT HLAING.

U Thein Maung,
Dr. Ba Maw.
U Ba Pe.
Dr. Ma Saw Sa.
U Shwe Tha.
Mr. S. A. S. Tyabji,

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Chairman is heard to welcome the representatives from Burma wh have arrived to confer with the Committee in response to their invitation.

The Course of Proceedings is considered.

Ordered that the Committee be adjourned till to-morrow at three o'clock

#### Die Mercuril 6° Decembris 1933

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD SNELL.
LORD RANKEILLOUR.
LOED HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN
SIR AUSTEN CHAMBERLAIN,
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERION.

· The following Delegates from Burma were also present :-

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANIL
COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.

U THEIN MAUNG,
DR. BA MAW,
U BA PE,
DR. MA SAW SA,
U SHWE THA,
MR, S. A. S. TYABJI,

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee decide that the Preliminary General Discussion between themselves and the Delegates from Burma on the question whether Burma should be separated from or federated with India shall be printed and laid before both Houses of Parliament.

The Committee proceed to discuss the question as to whether Burma should be separated from or federated with India, with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Jovis, 7° Decembris 1888

#### Present :

LORD ARCHBISHOP OF CANTERBURY. LORD CHANCELLOR MARQUESS OF SALISBURY MARQUESS OF ZETLAND MARQUESS OF LINLITHGOW MARQUESS OF READING. EARL OF DERBY EARL OF LYTTON EARL PFEL LORD MIDDLETON LORD KER (M LOTHIAN) LORD HARDINGE OF PENSHURST. LORD SNELL

LORD RANKEILLOUR LORD HUTCHISON OF MONTROSE MR. ATTLEE. MR BUTLER MAJOR CADOGAN

SIR AUSTEN CHAMBERLAIN.

MR Cocks

SIR REGINALD CRADDOCK.

MR DAVIDSON MR FOOT

SIR SAMUEL HOARE MR MORGAN JONES. SIR JOSEPH NAIL LORD EUSTACE PERCY. MISS PICKFORD.

SIR JOHN WARDLAW-MILNE,

EARL WINTERTON.

#### The following Delegates from Burma were also present :-

SRA SHUF BA MR C H CAMPAGNAC MR NANABHAI MERWANJI COW ASJEE U KYAW DIN. Mr K S Harper U Chit Hlaing,

U THEIN MAUNG DR BA MAW U BA PR DR MA SAW SA. U SHWE THA. Mr S A S TYABII.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read

The Proceedings of yesterday are read

The Committee again proceed to discuss the question as to whether Burma should be separated from or federated with India, with the Delegates from Burma

Ordered that Record B1, being a record of the discussion held yesterday and this day, be printed and be laid before both Houses of Parliament (vide Vol. II. Records (Session 1933-34), pp. 115-176)

The Committee proceed to discuss the proposals in the Burma White Paper (vide Second Appendix, Vol I, Part I) with the Delegates from Burma

Ordered that the Committee be adjourned till to-morrow at half-past ten O'clock.

#### Die Veneris 8° Decembris 1938

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
EARL PLEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD IRWIN.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.

SIR SAMUEL HOARE, SIR JOSEPH NALL. MR. MORGAN JONES. LORD EUSTACE PERCY. MISS PICKFORD. EARL WINTERTON.

The following Delegates from Burma were also present :-

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI
COWASJEE.
U KYAW DIN,
MR. K. S. HARPER,
U CHIT HLAING.

LORD SNELL.

LORD RANKEILLOUR.

U Thein Maung.
Dr Ba Maw.
U Ba Pr.
Dr. Ma Saw Sa.
U Shwe Tha.
Mr. S. A. S. Tyabji.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (vide Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned to Tuesday next at half-past ten o'clock.

#### Die Martis 12° Decembris 1933

#### Present:

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF ZETLAND.
"ARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORO SNELL.

LORO SNELL.
LORD RANKEILLOUR.
LORD HUTCHESON OF MONTROOP

LORO HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE, MR. MORGAN JONES, SIR JOSEPH NALL, LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

#### The following Delegates from Burma were also present :--

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI
COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.

U Thein Maung.
Dr. Ba Maw.
U Ba Pe.
Dr. Ma Saw Sa.
U Shwe Tha.
Mr. S. A. S. Tyabii.

#### THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Eriday last are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (vide Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at three o'clock.

#### Die Mercurii 13° Decembris 1933

#### Present :

LORD ARCHBISHOF OF CANTERBURY,
MARQUESS OF SALISBURY,
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD RANKEILLOUR.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

The following Delegates from Burma were also present:-

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI
COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.

U THEIN MAUNG, DR. BA MAW, U BA PE, DR. MA SAW SA, U SHWB THA, Mr. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceding of restanday are red.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (vide Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Jovis 14° Decembris 1983

#### Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PERL.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE,

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADOOCK.
MR. DAVIDSON.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORO EUSTACE PERCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILNE
EARL WINTERTON.

The following Delegates from Burma were also present:—

SRA SRWE BA.
MR. C. H, CAMPAGNAC.
MR. NANABHAI MERWANJI
COWASJEE,
U KYAW DIN.
MR. K, S, HARPER.
U CHIT HLAING.

U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (vide Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ter o'clock.

#### Die Veneris 15° Decembris 1988

#### Present :

Lord Archbishop of Canterbury.
Marquess of Salisbury.
Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl Peel.
Lord Middleton.
Lord Ker (M. Lothian).
Lord Hardinge of Penshurst.
Lord Snell.

LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE,

Mr. Butler. Sir Austen Chamberlain. Mr. Cocks.

SIR REGINALD CRADDOCK.

MR. DAVIDSON. SIR SAMUEL HOARE, LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

The following Delegates from Burma were also present:-

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI
COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.
U CHIT HLAING.

U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
Mr. S. A. S. TYABJI.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (vide Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned to Tuesday at half-past ten o'clock.

# Die Martis 19° Decembris 1983

# Present :

MARQUESS OF SALISBURY,
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW,
MARQUESS OF READING.
EARL OF DERBY,
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN),
LORD HARDINGE OF PENSHURST.
LORD SNELL.

LORD RANKELLOUR. LORD HUTCHISON OF MONTROSE. MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
MISS PICKFORD.

MISS PICKFORD.
SIR JOHN WARDLAW-MILNE
EARL WINTERTON.

The following Delegates from Burma were also present :--

SRA SHWE BA.
MR. C. H. CAMPAGNAC.
MR. NANABHAI MERWANJI
COWASJEE.
U KYAW DIN.
MR. K. S. HARPER.

U CHIT HLAING.

U THEIN MAUNG.
DR. BA MAW.
U BA PE.
DR. MA SAW SA.
U SHWE THA.
MR. S. A. S. TYAB.

THE MARQUESS OF LINGITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Fnday last are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (vide Second Appendix, Vol. I, Part I) with the Delegates from Burma.

Ordered that the Committee be adjourned till to-morrow at half-past ten

#### Die Meccuril 20° Decembris 1983

#### Present:

MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST. LORD SNELL.

LORD RANKEILLOUR. LORD HUTCHISON OF MONTROSE. MR. ATTLEE. MR. BUTLER. MAJOR CADOGAN. SIR AUSTEN CHAMBERLAIN. Mr. Cocks.

SIR REGINALD CRADDOCK.

MR. DAVIDSON. Mr. Foot.

SIR SAMUEL HOARE. MR. MORGAN JONES. LORD EUSTACE PERCY.

Miss Pickford.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

The following Delegates from Burma were also present:-

SRA SHWE BA.

MR. C. H. CAMPAGNAC.

Mr. Nanabhai Merwanji Cowasjee.

U KYAW DIN.

A.1.

MR. K. S. HARPER.

U CHIT HLAING.

U THEIN MAUNG.

Dr. Ba Maw. U BA PE.

DR. MA SAW SA. U SHWE THA.

MR. S. A. S. TYABJI.

THE MARQUESS OF LINLINGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the Burma White Paper (vide Second Appendix, Vol I, Part I) with the Delegates from Burma.

The Lord in the Chair is heard to take leave of the Delegates from Burma.

The Secretary of State for India is also heard to take leave of the Delegates from Burma.

U Ba Pe is heard to take leave of the Committee.

The Secretary of State for India is heard to request the leave of the Committee to lay Records A.1 and A.2 before them, being :-

> I. Notes by the Secretary of State for India on the Points of Difference between the Proposals for Constitutional Reform in Burma and in India.

> II. Memorandum by the Secretary of State for India on the Franchise, Composition of the Legislature, and Representation of Minorities and Special Interests in Burma.

> III. Memorandum by the Secretary of State for India on Excluded Areas in Burma.

> I. Memorandum by the Secretary of State for India on Discrimination in Burma.

A.2. II. Memorandum by the Secretary of State for India giving Proposals for the future administration of the Burma railways.

Ordered that Records A.1 and A.2 be printed and be laid before both Houses of Parliament (vide Volume II, Records (Session 1933-34).

Ordered that the Committee be adjourned to Tuesday the 30th of January at three o'clock.

#### Die Martis 30° Januarii 1984

#### Present:

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.

LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD SNELL. LORD RANKELLLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

MR. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE. MR. MORGAN JONES. SIR JOSEPH NALL. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of the 20th December last are read.

The Committee proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

#### Die Veneris 2° Februarii 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PELL.
LORD MIDDLETON.

Lord Ker (M. Lothian). Lord Hardinge of Penshurst.

LORD SHELL.

Tone Disert.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MAJOR. CAMBRAN.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON.

MR. FOOT.

SIR SAMUEL HOARE.
MR. MORGAN JONES,
LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (wide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

#### Die Lunse 5° Februarii 1934

#### Present :

LORD CHANCELLOR.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF LINLITHGOW.

MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.
EARL PEEL.

LORD MIDDLETON. LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD IRWIN.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. Attlee. Mr. Butler. Major Cadogan,

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

It is moved by the Chairman, that a letter be addressed to the relatives of Mr. Rangaswami Iyengar to express the sympathy of the Committee with them on the death of Mr. Rangaswami Iyengar and their deep appreciation of his work as a member of the British India Delegation to the Committee.

The same is agreed to.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom. Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Martis 6° Februarii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY.

LORD CHANCELLOR. MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF READING. EARL OF DERBY.

EARL OF LYTTON. EARL PEEL.

LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD IRWIN. LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN, SIR REGINALD CRADDOCK,

Mr. DAVIDSON.

MR. FOOT.

SIR SAMUEL HOARE. MR. MORGAN JONES. LORD EUSTACE PERCY.

Miss Pickford.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom. Ordered that the Committee be adjourned till to-morrow at half-past two

o'clock.

#### Die Mercurli 7° Februarli 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.

EARL PEEL.

LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR.

MR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAM

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. Davidson. Mr. Foot.

SIR SAMUEL HOARE. MR. MORGAN JONES. SIR JOSEPH NALL. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE,

EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday at half-past ten o'clock.

#### Die Veneria 9° Februarii 1934

#### Present :

LORD CHANCELLOR.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.

EARL PEEL.

LORD MIDDLETON.

LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. ATTLEE. Mr. Butler. Major Cadogan.

SIR AUSTEN CHAMBERLAIN.

MR. COUKS.

SIR REGINALD CRADDOCK.

Mr. Davidson. Mr. Foot.

SIR SAMUEL HOARE. MR. MORGAN JONES. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

#### Die Lunae 12° Februarii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY.

LORD CHANCELLOR.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF LINLITHGOW.

MARQUESS OF READING.

EARL OF DERBY. EARL OF LYTTON.

EARL PEEL.

LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD IRWIN.

LORD SNELL.
LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

MR. COCKS.

SIR REGINALD CRADDOCK.

MR. DAVIDSON. MR. FOOT.

SIR SAMUEL HOARE. MR. MORGAN JONES. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Martis 13° Februarit 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY.

MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW.

MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.

EARL PEEL

LORD MIDDLETON.

LORD KER (M LOTHIAN).

LORD HARDINGE OF PENSEURST.

LORD IRWIN. LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLES. MR. BUTLER.

Major Cadogan, Sir Austen Chamberlain.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON.

MR. FOOT.

SIR SAMUEL HOARE.

Mr. Morgan Jones.

SIR JOSEPH NALL. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON,

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of vesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Mezourii 14° Februarii 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD IRWIN. LORD SNELL. LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADDOCK.

Mr. Davidson. Mr. FOOT.

SIR SAMUEL HOARE. Mr. Morgan Jones. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

#### Die Veneris 16° Februarii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. LORD MIDDLETON, LORD KER (M. LOTHIAN). LORD IRWIN. LORD SNELL. LORD RANKELLLOUR. LORD HUTCHISON OF MONTROSE.

MR. BUTLER, Major Cadogan. SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADDOCK, Mr. DAVIDSON. MR. FOOT. SIR SAMUEL HOARE. Mr. Morgan Jones. Sir Joseph Nall. LORD EUSTACE PERCY. MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

#### Die Lunee 19° Februarii 1984

#### Present .

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL PEEL. LORD MIDDLETON.

LORD SNELL. LORD RANKEILLOUR.

LORD KER (M. I.OTHIAN). LORD INWIN.

MR. ATTLEE. Mr. Butler. MAJOR CADOGAN,

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE. MR. MORGAN JONES. SIR JOSEPH NALL. LORD EUSTACE PERCY. MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o 'clock.

#### Die Martis 20° Februarii 1934

#### Present :

LORD ARCHHISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST. LORD IRWIN.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MATOR CADOGAN.

MR. COCKS.

SIR REGINALD CRADDOCK. Mr. DAVIDSON.

MR. FOOT.

SIR SAMUEL HOARE. MR. MORGAN JONES. SIR JOSEPH NALL. LORD EUSTACE PERCY.

MISS PICKFORD.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'elock.

#### Die Veneria 23° Februarii 1934

#### Present !

LORD ARCHBISHOP OF CANTERBURY.
MARQUISS OF ZETLAND.
MARQUISS OF LINLITHGOW.
MARQUISS OF READING.
EARL OF DERBY.
EARL OF LITTON.
EARL PEEL
LORD MIDDLETON.
LORD SNELL
LORD SNELL
LORD RANKLILLOUR.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTLIN CHAMBERLAIN.
MR COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT
SIR SAMULL HOARE.
MR. MORGAN JONES
LORD EUSTACE PERCY.
MISS PICKTORD.
SIR JOHN WARDLAW-MILMI

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

#### Die Lunae 26° Februarii 1934

#### Present

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PELL
LORD MIDULETON.
LORD KER (M. LOTHIAN).
LORD IRWIN.
LORD SNELL.
LORD RANKEILLOUR.

MR. ATTLEL.
MR. BUTLER
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PLRCY.
MISS PICKFORD.
SIR JOHN WARDLAW-MILMI
EARL WINTERTON

THE MARQUESS OF LINISTHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

#### Die Martis 27° Februarii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY. MR. BUTLER. MAJOR CADOGAN. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. SIR AUSTEN CHAMBERLAIN. MARQUESS OF READING. Mr Cocks. SIR REGINALD CRADDOCK. EARL OF DERBY. Mr. Davidson. EARL PEEL. MR FOOT. LORD MIDDLETON. SIR SAMUEL HOARE. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST. Mr. Morgan Jones. SIR JOSEPH NALL. LORD IRWIN. LORD EUSTACE PERCY. LORD SNELL. MISS PICKFORD. LORD RANKEILLOUR.

LORD RANKEILLOUR. MISS PICKFORD.

LORD HUTCHISON OF MONTROSE. SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

<sup>2</sup> The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom, Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

#### Die Mercurii 28° Februarii 1934

#### Present :

MR. ATTLEE. LORD ARCHBISHOP OF CANTERBURY. MR. BUTLER. MARQUESS OF ZETLAND. MAJOR CADOGAN. MARQUESS OF LINLITHGOW. MARQUESS OF READING. SIR AUSTEN CHAMBERLAIN. EARL OF DERBY. Mr. Cocks. EARL PEEL. SIR REGINALD CRADDOCK. LORD MIDDLETON. Mr. Davidson. LORD KER (M. LOTHIAN). Mr. FOOT. LORD HARDINGE OF PENSEURST. SIR JOSEPH NALL. LORD EUSTACE PERCY. LORD IRWIN. EARL WINTERTON. LORD SNELL. LORD RANKEILLOUR.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

LORD HUTCHISON OF MONTROSE.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 6th of March next at half-past ten o'clock.

#### Die Martis 6° Martii 1834

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. Butler. Major Cadogan.

SIR AUSTEN CHAMBERLAIN. MR. COCKS. SIR REGINALD CRADDOCK.

MR. DAVIDSON. MR. FOOT.

SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERION.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday, the 28th of February last, are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom. Ordered that the Committee he adjourned till to-morrow at half-past two o'clock.

#### Die Mercurii 7º Martii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.

SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

It is moved by the Chairman, That a letter be addressed to the relatives of Miss Pickford to express the sympathy of the Committee with them on the death of Miss Pickford and their deep appreciation of her work as a member of the Committee.

The same is agreed to.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom. Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

## Die Veneris 9° Martii 1934

## Present:

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL PEEL. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST. LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUILER. MAIOR CADOGAN.

SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. Foot

SIR SAMUEL HOARE. Mr. Morgan Iones. LORD EUSTACE PERCY.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom. Ordered that the Committee be adjourned to Monday next at half-past four o'clock.

## Die Lunae 12° Martii 1984

#### Present :

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. HARL OF DERBY. EARL PEEL. VISCOUNT HALIFAX LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLER. MR. BUTLER. MAIOR CADOGAN.

SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADDOCK.

Mr. Devinson.

MR. FOOT, SIR SAMUEL HOARE,

MR MORGAN JONES. LORD EUSTACE PERCY.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

The Chairman is heard to inform the Committee, that a telegram has been received from U Thein Maung, on behalf of the Delegation from Burma, expressing their sympathy with the relatives of the late Miss Pickford, and their appreciation of her work as a member of the Committee.

Ordered that the Committee be adjourned till to-morrow at half-past ten o'clock.

## Die Martis 13° Martii 1984

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.

EARL PEEL. VISCOUNT HALIFAX. LORD MIDDLLTON.

LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD SNELL.
LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN. MR. COCKS SIR REGINALD CRADDOCK.

MR DAVIDSON. MR. FOOT. SIR SAMUEL HO

SIR SAMUEL HOARE. MR. MORGAN JONES. LORD EUSTACE PERCY.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

## Die Mercurii 14° Martii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.

LORD RANKRILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBRRLAIN. MR. COCKS. SIR REGINALD CRADDOCK.

Mr. Davidson. Mr. Foot.

SIR SAMUEL HOARE. SIR JOSEPH NALL. LORD EUSTACE PERCY. EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Secretary of State for India is heard to request the leave of the Committee to lay Record B.2 before them, being Memoranda submitted by the Delegates from Burma after the termination of their discussions with the Joint Committee.

Ordered that Record B.2 be printed and be laid before both Houses of Parliament (vide Vol. II (Session 1933-34), Records, pp. 177-274).

• The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

## Die Veneris 28° Martii 1984

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.
MARQUESS OF READING.

EARL PEEL.

LORD MIDDLETON.

LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKBILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER.

SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADDOCK.

Mr. DAVIDSON. SIR SAMUEL HOARE.

LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

SIR AUSTEN CHAMBERLAIN in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday next, at half-past four o'clock.

#### Die Lunas 26° Martii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY, MARQUESS OF SALISHURY.

Marquess of Salisbury.
Marquess of Zetland.
Marquess of Linlithgow.

MARQUESS OF READING.

EARL OF DERBY. EARL OF LYTTON.

EARL PEEL.

VISCOUNT HALIFAX. LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST. LORD SNELL.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAIOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

MR. Cocks.

SIR REGINALD CRADDOCK.

MR. DAVIDSON. MR. FOOT.

SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past four o'clock.

## Die Martis 27° Martii 1934

#### Present :

Marquess of Salisbury.

Marquess of Zetland

Marquess of Linlithgow.

Earl of Derby.

Earl Peel.

Viscount Halifak.

Lord Middleton.

Lord Ker (M. Lothian).

Lord Hardinge of Penshurst.

Lord Hutchison of Montrose.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMEERLAIN.
MR. COCKS.
SIR REGINALD CRADOOCK.
MR. DAVIDSON.
MR. FOOT
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERION.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee agai proceed to discuss the proposals contained in the hite Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom. Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

#### Die Mercurii 28° Martii 1934

#### Present :

Lord Archeishof of Canterbury.
Marguess of Saliseury.
Marguess of Zeiland.
Marguess of Linlithgow.
Marguess of Reading.
Earl of Lytion.
Earl Peel.
Viscount Halifax.
Lord Middleton.
Lord Ker (M. Lothian).
Lord Hardinge of Penshuret.
Lord Snell.
Lord Rankeillour.
Lord Hutchison of Montrose.

· Mr. Attlee.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Mr. Cocks.
Sir Reginald Craddock.
Mr. Davidson.
Me. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.
Earl Winterion.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 17th of April

next at half-past ten o'clock.

## Die Martis 17° Aprilis 1984

#### Present :

LORD ARCHBISHOP OF CANTERBURY. LORD CHANCELLOR. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL, VISCOUNT HALIFAX. LORD MIDDLETON.

LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD SNELL,

LORD RANKEILLOUR.

MR. ATTLEE. MR. BUTLER. Major Cadogan. Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. Davidson. Mr. FOOT.

SIR SAMUEL HOARE, Mr. Morgan Jones. LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday the 28th of March last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at half-past two o'clock.

## Die Mercurii 18° Aprilis 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY. \* MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. VISCOUNT HALIFAX. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MATOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

MR. DAVIDSON. SIR SAMUEL HOARE. LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

# Die Veneris 20° Aprilis 1934

MR. ATTLEE.

MR. BUTLER.

MR. Cocks.

MAJOR CADOGAN.

MR. DAVIDSON.

MR. MORGAN JONES.

LORD EUSTACE PERCY.

SIR REGINALD CRADDOCK.

SIR JOHN WARDLAW-MILNE.

## Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.

EARL PEEL. VISCOUNT HALIFAK. LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKELLOUR.

LOND HUTCHISON OF MONTROSE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read. .

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday next at half-past ten o'clock.

## Die Martis 24° Aprilis 1984

#### Present :

LORD ARCHBISHOP OF CANTERBURY. LORD CHANCELLOR. MARQUESS OF SALISBURY.

Marquess of Zetland. Marquess of Lineithguw.

MARQUESS OF READING.

EARL OF DERBY. EARL OF LYTTON. EARL PEEL.

VISCOUNT HALIFAX. LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. Attlee. Mr. Butler. Major Cadogan.

SIR AUSTEN CHAMBERLAIN.

Ma. Cooks.

SIR REGINALD CRADDOCK.

MR. DAVIDSON.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned till to-morrow at balf-past two o'clock.

## Die Mercurii 25° Aprilis. 1984

### Present :

MARQUESS OF SALISBURY. MARQUESS OF ZETLANO. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL PEEL. VISCOUNT HALIFAK. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORO HARDINGE OF PENSHURST. LORD SNELL.

LORD RANKEILLOUR. LORD HUTCHISON OF MONTROSE.

Mr. ATTLEE. Mr. Butler. Major Caoogan,

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. Davidson. Mr. Foot.

SIR SAMUEL HOARE. Mr. Morgan Jones. LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair,

The Order of Adjournment is read.

The Proceedings of yesterday are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom

Ordered that the Committee be adjourned to Friday next at half-past ten o'clock.

## Die Veneris 27° Aprilis 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. VISCOUNT HALIFAX.

LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD IRWIN. LORO SNELL.

LORD RANKEILLOUR,

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER.

SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADOOCK.

Mr. DAVIOSON. Mr. Foot.

Mr. Morgan Jones. LORD EUSTACE PERCY.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom

Ordered that the Committee be adjourned to Tuesday the 1st of May next at half-past ten o'clock.

#### Die Martis 1° Maii 1934

#### Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETEAND.
MARQUESS OF LINLITHGOW.
LORD MIDDLETON.
LORD HARDINGE OF PENSHURST.
LORD SNELL.
MR. ATTLEE.
MR. BUTLER.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.

LORD RANKEILLOUR. MR. FOOT.

LORD HUTCHISON OF MONTROSE. LORD EUSTACE PERCY.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Proceedings of Friday last are read.

It is moved by the Chairman, That, leave having been given by the House of Lords for the Clerk to the Joint Committee to attend to be examined as a witness before the Committee of Privileges of the House of Commons, he is authorised by the Joint Committee, when so attending, to produce all correspondence referring to the evidence given by the Manchester Chamber of Commerce.

The same is Agreed to.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Monday the 14th May at a quarter-past three o'clock.

## Die Lunae 14° Maii 1984

#### Present :

MARQUESS OF SALISBURY. MR. ATTLEE. MARQUESS OF LINLITHGOW. MR. BUTLER. MARQUESS OF READING. MAJOR CADOGAN. EARL OF DERBY. SIR AUSTEN CHAMBERLAIN. EARL OF LYTTON. Mr. Cocks. VISCOUNT HALIFAX. SIR REGINALD CRADDOCK. CORD MIDDLETON. MR. DAVIDSON. LORD KER (M. LOTHIAN). SIR SAMUEL HOARE. LORD HARDINGE OF PENSHURST. Mr. Morgan Jones. LORD SNELL. LORD EUSTACE PERCY. LORD RANKEILLOUR. SIR JOHN WARDLAW-MILNE. LORD HUTCHISON OF MONTROSE. EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday the 1st of May are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom.

Ordered that the Committee be adjourned to Tuesday the 29th instant at half-past ten o'clock.

The Order of Adjournment is read.

## Die Martis 20° Maii 1934

## Present :

MARQUESS OF SALISBURY. MR ATTLEE. MARQUESS OF ZETLAND. MR. BUTLER. MAJOR CADOGAN. MARQUESS OF LINLITHGOW. SIR AUSTEN CHAMBERLAIN. MARQUESS OF READING. EARL OF DERBY. MR. Cocks. EARL OF LYTTON. SIR REGINALD CRADDOCK. MR. DAVIDSON. EARL PELL, MR FOOT. LORD MIDDLETON. SIR SAMUEL HOARE. LORD KER (M LOTHIAN). MR. MORGAN JONES. LORD HARDINGE OF PENSHURST. SIR JOSEPH NALL. LORD SNELL. LORD EUSTACE PERCY. LORD RANKEILLOUR. LORD HUTCHISON OF MONTROSE. SIR JOHN WARDLAW-MILNE. EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Monday, 14th May, are read.

The Secretary of State for India is heard to request the leave of the Committee to lay Record B.3 before them, being, Supplementary Memoranda submitted by Delegates from Burma commenting on Memoranda submitted by Mr. K. B. Harper on Trade Relations between India and Burma and on Commercial Discrimination (Vide Vol. II, Records (Session 1933-34), pp. 275-291).

Ordered, that Record B 3 be printed and laid before both Houses of Parliament (vide Records, Vol. II).

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom

Ordered that the Committee be adjourned to Tuesday the 5th of June next at half-past ten o'clock.

## Die Martis 5° Junii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY. MR. ATTLEE. MARQUESS OF SALISBURY. MR BUTLER. MARQUESS OF ZETLAND. MAJOR CADOGAN. SIR AUSTEN CHAMBERLAIN. MARQUESS OF LINLITHGOW. MARQUESS OF READING. MR Cocks. EARL OF DERBY SIR REGINALD CRADDOCK. EARL OF LYTTON. MR. DAVIDSON. EARL PEEL, Mr. FOOT. LORD MIDDLETON. SIR SAMUEL HOARE. Mr Morgan Jones. Sir Joseph Nall. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSEURST. LORD IRWIN. LORD EUSTACE PERCY. LORD SNELL. SIR JOHN WARDLAW-MILNE. LORD RANKEILLOUR. EARL WINTERION.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

LORD HUTCHISON OF MONTROSE

The Proceedings of Tuesday, 29th May last, are read.

The Committee again proceed to discuss the proposals contained in the White Paper (vide Appendices, Vol. I, Part I) and matters arising therefrom

Ordered that the Committee be adjourned to Monday the 18th of June next at three o'clock.

## Die Longe 18° Junii 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF LINLITHGOW.

MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.

EARL PEEL.

VISCOUNT HALIFAX.

LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
.MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN,
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN SIMON.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Tuesday, the 5th of June, are read.

The following Draft Report is laid before the Committee by the Lord in the Chair.

#### ORDERED TO REPORT:-

That this Committee was appointed at the commencement of the present Session,

The Minutes of Evidence taken before, and Records reported from, the original Committee were referred to us. For purposes of convenience this Report treats the present Committee as though it had been in existence since the appointment of the original Committee on the 11th April, 1933.

We record with profound regret the death of two of our members, Lord Burnham and Miss Pickford, and we are deeply sensible of the loss which we have sustained by being deprived of the aid of their experience and judgment in the preparation of our Report.

We were empowered to call into consultation representatives of the Indian States and of British India, and we accordingly invited the following Delegates to attend our deliberations:—

## Delegates from the Indian States

Rao Bahadur Sir V. T. Krishnama Chari, C.I.E. Nawab Sir Liaqat Hyat-Khan, O.B.E. Nawab Sir Muhammad Akbar Hydari. Sir Mirza Muhammad Ismail, C.I.E., O.B.E. Sir Manubhai Nandshanker Mehta, C.S.I. Sir Prabhashankar Dalpatram Pattani, K.C.I.E.

Part I. The Report as amended and finally agreed to by the Joint Committee will be found in Volume I,

Mr. Y. Thombare.

### Page ii

## Delegates from Continental British India

His Highness the Right Honourable Sultan Sir Mohamad Shah, Aga Khan, G.C.S.I., G.C.I.E., G.C.V.O.

Sir C. P. Ramaswami Aiyar, K.C.I.E.

Dr. B. R. Ambedkar.

Sir Hubert Carr.

Mr. A. H. Ghuznavi.

Lieut.-Colonel Sir Henry Gidney.

Sir Hari Singh Gour.

Mr. A. Rangaswami Iyengar.

Mr. M. R. Jayakar.

Mr. N. M. Joshi.

Mr. N. C. Kelkar.

Begum Shah Nawaz.

Rao Bahadur Sir A. P. Patro.

Sir Abdur Rahim.

The Right Honourable Sir Tej Bahadur Sapru, K.C.S.I.

Sir Phiroze Sethna.

Dr. Shafa'at Ahmad Khan.

Sardar Bahadur Buta Singh.

Sir Nripendra Nath Sircar.

Sir Purshotamdas Thakurdas, C.I.E., M.B.E.

Mr. Zafrullah Khan.

## Delegates from the Province of Burma

Sra Shwe Ba.

Mr. C. H. Campagnac, M.B.E.

Mr. N. M. Cowasji.

U Kyaw Din.

Mr. K. S. Harper.

U Chit Hlaing.

U Thein Maung.

Dr. Ba Maw.

U Ba Pe.

Dr. Ma Saw Sa.

U Shwe Tha.

Mr. S. A. S. Tyabji

All the above were able to attend with the exception of Mr. Kelkar, who was prevented by illness from coming to England. We have learned with very great regret of the death of Mr. Rangaswami Iyengar since his return to India.

The Delegates took part in more than seventy of our meetings. some of which were devoted to discussion between the Delegates and ourselves, and others to the hearing of evidence.

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We desire to place on record onr appreciation of the assistance which we have derived from our full and frank discussions with the Delegates, for many of whom so long an absence from their own country must have caused great personnel inconvenience and sacrifice. Their advice and co-operation have been of the greatest value to us. Many of them have also furnished us with separate memoranda on various points, and we may mention in particular the Joint Memorandum signed by all the British Indian Delegates who were still in England, which has been of great service to us as focussing British Indian views and to which we shall have occasion often to refer in the course of our Report

We have held . meetings in all and have examined over 120 witnesses, whose evidence has been printed in Volumes 2A, 2B and 2C of the Minutes of Evidence published in the autumn of 1933. We are much indebted to all the witnesses for the assistance which they gave us, but our special gratitude is due to the Secretary of State for India, who, though a member of the Committee, took the perhaps unprecedented course of tendering himself as a witness, and who replied to nearly 6,000 questions during the ninetecn days over which his evidence extended. In no other way could we have been so effectively enabled to distinguish, and to examine in all their bearings, the intricate and difficult issues which we are charged to consider. We have also been fortunate in having at our disposal the practical knowledge of Indian affairs acquired by many of our own number from their personal experience in high office or in other work in India.

#### Page IV

CHAIRMAN'S DRAFT REPORT TO BE SUBMITTED TO THE JOINT SELECT COMMITTEE ON INDIAN CONSTITUTIONAL REFORM

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#### PART I\*

#### INTRODUCTION

1 The conditions of the problem with the examination of which The Statutory we have been entrusted are brilliantly described in the comprehensive survey, survey which forms Volume I of the Report of the Statutory Commission We are not aware that the accuracy of this survey has been mpeached, and we are content to take it both as the starting point and the textbook of our own investigation. Nor, indeed could we do therwise, for it would have been impossible for us in the time at our hisposal to have accumulated and digested so vast a mass of fact and detail We desire to place on record our deep obligation to the work of the Commission and our conviction that, if we had not had before us the fruits of their patient and exhaustive enquines, we should scarcely have been able to enter upon, much less to complete 15 within any measurable space of time, the task which Parliament has imposed upon us Nevertheless, it the labours of the Commission have happily relieved us of the task of restating by way of introduction the conditions of the Indian problem, there are certain elements in it which must so sensibly affect the judgment which we 20 are invited to form and the recommendations which it will be our duty to make that we may be permitted briefly to refer to them

2 The sub-continent of India, 1 lying between the Himalayas and The peoples Cape Comorin, comprises an area of 1,570,000 square miles with a of India. population now approaching 340 000,000 Of this area British India 25 comprises about 820,000, and the Indian States 700,000, square miles, with populations of about 260,000,000 and 80,000,000 respectively It is inhabited by many races and tribes, speaking over two hundred different languages or dialects, and often as distinct from one another in origin, tradition and manner of life, as are the 30 nations of Europe Two thirds of its inhabitants profess Hinduism in one form or another as their religion, over 77,000,000 are followers of Islam, and the difference between the two is not only one of religion in the stricter sense, but also of race, of law, and of culture. They may be said indeed to represent two distinct and

\*\*Note — For convenience it may be noted that this Part I was never considered, as the Committee agreed to consider an alternative Part I laid before them by the Lord in the Chair on the 27th July, 1834 Vide infra pp 470-491

separate civilisations. Hinduism is distinguished by the singular 35 phenomenon of caste, which is the basis of its religious and social system and which, save in a very restricted field, remains impervious to the more liberal philosophles of the West; the religion of Islam on the other hand is based upon the conception of the equality of man. In addition to these two great communities, there is also to be 40 found an infinite variety of other religions and sects, ranging from

1 i.s., excluding Burma: see infra, para, 45.

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the simple beliefs of Animism to the mystical speculations of the Buddhist. The great majority of the people of India derive their living from the soil and practise for the most part a traditional and self-sufficing type of agriculture. The gross wealth of the country is very considerable, but owing to the vast number of its inhabitants the average standard of living is low and can scarcely be compared even with that of the more backward countries of Europe. Literacy is rare outside urban areas, and even in these the number of literates bears but a small proportion to the total population.

The Indian States.

3. In its political structure India is divided between British India 10 and the Indian States. The latter are nearly 600 in number. They include 109 States, among them great States like Hyderabad, Mysore, Baroda, Kashmir, Gwalior and Travancore, the Rulers of which are entitled to a seat in the Chamber of Princes; 128 which are represented in the Chamber by 12 of their own order elected by 15 themselves; and 327 Estates, Jagirs, and others which are only States in the sense that their territory, often consisting only of a few acres, does not form part of British India. The more important States within their own territories enjoy all the principal attributes of sovereignty, but their external relations are in the hands of the 20 Paramount Power. The sovereignty of others is of a more restricted kind, and over others again the Paramount Power exercises in varying degrees an administrative control.

British India.

4. British India consists of nine Governors' Provinces (excluding Burma), together with certain other areas administered under the 25 Government of India itself. The Governors' Provinces possess a considerable measure of executive and legislative independence; but over all of them the Government of India and the Central Legislature can exercise executive and legislative authority. In respect of certain matters, known as transferred subjects, the 30 Provincial Executives are responsible to their Legislatures; but the Governor-General in Council is independent of the Central Legislature and responsible only to the Secretary of State and through him to Parliament. An official bloc forms part of both the Central and Provincial Legislatures and in general acts in accordance with the 35 wishes of the Governor-General and Provincial Governors respectively. British India is administered through a number of services, some of them all-India services, and some provincial. Of the former the most important is the Indian Civil Service, recruited by the Secretary of 40 State.

Peatures of present constitution. 5. Such in the barest ontline is the present constitutional structure of British India, into the details of which we shall have occasion to enter with more particularly when we deal with the specific-proposals of the White Paper in their order. It will be seen that its main features are a Central Executive, responsible only to the 45 Secretary of State and through him to Parliament: Provincial

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Executives exercising powers over a wide field, responsible in certain matters hut not in others to the Provincial Legislatures; and Central and Provincial Legislatures exercising the law-making power, but with no control over the Executive in one case and 5 with only a limited control in the other. Yet notwithstanding the measure of devolution on the Provincial authorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional 10 edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their responsibilities for the peace, order and good government of India.

6. We are not of opinion that British rule in India stands in Results of British rule. need of any apologist. We claim for it neither infallihility nor perfection; hut if, as with all governments, it has at times fallen into error, its errors have been nobly and amply redeemed. Its first justification is that it has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any part of the sub-continent; next, that it has 20 harred the way against the foreign invader and has maintained tranquillity at home; and lastly, by the creation of a just administration and an incorruptible magistracy, that it has established the rule of law, and has secured to every subject of His Majesty in British India the right to go in peace about his daily work and to retain for 25 his own use the fruit of his labours. Nor ought we to omit to notice how small is the British element in the services by whose agency these results have been brought about. The total European population of British India to-day, including some 60,000 British troops, is only 135,000; the total British element to the superior services is 30 about 3,150; and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police.

7. The magnitude of this achievement cannot be justly estimated The Moguli without reference to the condition of things which preceded it. Empire The arts of government and administration were not indeed odw exceeding and the brain growte and the strength at the Emperors who reigned between 1525 and 1707 maintained a State which ultimately embraced the larger part of India and did not suffer by comparison with, if it did not even surpass in splendour, the contemporary monarchies of Europe. But the strength of the Mogul Empire 40 depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed; nor during its most magnificent period was its authority unchallenged either within or without its borders. Its

system of government resembled that of other Asiatic despotisms. 45 The interests of the subject races were made subservient to the amhitions, and often to the caprices, of the monarch; for the politic toleration of Akbar found no imitator among his successors.

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The imperial splendour became the measure of the people's poverty, and their sufferings are said by a French observer, long resident at the Court of Aurungzeb, to have been beyond the power of words to describe.

8. There are pages in the history of Iodia, between the collapse The post-Mogul of the Mogul Empire and the final establishment of British supremacy, which even to-day cannot be read without horror. With

but brief intervals of relief, vast tracts were given over to the internecine struggles of the princes, the guerilla warfare of petty chiefs, and the exactions of Indian and European adventurers; and to 10 townsmen and peasants alike, the helpless victims of malice domestic, foreign levy, and the whole apparatus of anarchy, it might have seemed that the sum of human misery was complete. It is in the improvement which has taken place in Indian agriculture since the establishment of peace and security that the Royal Commission in 15 1928 found a measure of the extent to which husbandry had been injured and its progress delayed by the long period of disorder and unrest that preceded the British occupation.

Restoration of peace and order. 9. Such were the conditions out of which British rule created a new and stable polity, not without the support and co-operation 20 of Indians themselves. Peace and order were re-established, the Relations of the Indian States with one another and with the Crown were finally determined, and the rule of law made effective throughout the whole of British India. On this solid foundation the majestic structure of the Government of India rests, and it can be claimed 25 with certainty that in the period which has elapsed since 1858, when the Crown assumed supremacy over all the territories of the East India Company, the intellectual and material progress of India has been greater than it was ever within her power to achieve during any other period of her long and chequered history.

Unity created by British rule, 10. The success of British rule has produced many, and sometimes unforeseen, consequences. A strong central Government, without a rival to challenge its authority, has transformed British India into a single unitary State. A sense of political unity has been thereby created and there have emerged the beginnings of a sense of nation-35 ality, transcending, as it would seem, the profound divisions of race, language, and religion, and based upon the conception of India as the common heritage of all her peoples. India is far from being yet a homogeneous nation; she is perhaps (and the future alone can tell) a nation in the making; but we do not think it open to question that 40 the growth of any national spirit bas only been rendered possible by the existence of a powerful and disinterested government, willing to play the part of an impartial arbiter, and able by the exercise of its authority to keep under control the centrifugal and disruptive forces produced by acute religious and racial conflict. It is a singular 45 reflection that in the English tongue Indian nationalists have found

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the most convenient vehicle for the public discussion and interchange of their political ideas; but none can fail to appreciate its significance.

Growth of national idea.

11. It would be as unreasonable to feel surprise at the growth of this spirit as it would be idle to deny its existence. It was begotten 5 of the political union between the two countries and it has been sustained and nourisbed by an ardent study of British constitutional theory. Indian political thought, postulating too hastily the universal validity of the latter, a premise to which few Englishmen would give an unqualified assent, has not failed to point out a supposed 10 inconsistency between theory and practice in the case of British rule in India; but the reality of the Indian argument rests in our opinion on other and broader grounds.

Basis of strength of Government of India 12. The strength of the Government of India for many generations may, as it seems to us, be referred to two causes; the first, its 15 accountability to Parliament, which has given it a quality of stability

and permanence impossible of attainment otherwise by a system of personal rule, the second, its general acceptance by the mass of the Indian people These were able indeed, and with good cause, to 20 recognise the distinction between good governors and had, hut, so long as they were left alone, knew nothing of, or at least were indifferent to, any distinction between the forms of government itself A people, whose ambitions are wholly negative and do not extend heyond a desire for peace and tranquility, will be content to accept 25 any form of government which is strong and reasonably impartial, and that Covernment must be deemed the most successful which is able to satisfy the aspirations of those whom it governs at the particular stage of development which they have attained It is perbaps the most signal tribute to British rule in India that the performance of 30 all the fundamental purposes of government, that is to say, the maintenance of law and order and an upright administration, is now accepted as a matter of course, so that men are free to turn then thoughts to other things Conditions have thus been created favourable in the case of an acute and ingenious race to speculation 35 upon the forms of government, and, as a natural consequence, to the rise of that which is sometimes called a politically minded class. Men become no longer content to be well governed, but desire a voice in their own government The Montagu-Chelmsford Reforms and the Government of India Act, 1919, were designed to meet the demand 40 then made The claim is now to have a voice in the selection of those who govern

13 The benevolent autocrat no less than the tyrant holds by a Want of precarious tenure, if in the last analysis he has not the support of a between body of public opinion, whether tacit or expressed, like Antaeus in Go 45 the ancient myth, be must draw strength from contact with the soil The moralist may deplore, but the least cynical must admit, that the sentiment of gratitude plays but a small part in the formation of that

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opinion, and we should doubtless listen with incredulity to a historian who should ascribe it to the English people after the Conquest, yet the Normans made England a nation and laid the foundations of a system of law and administration which endures to this day There 5 is ample evidence that enlightened Indian opinion has a very just appreciation of the benefits derived from the British connection, but the attachment of a people to its government is not always determined by an objective calculation of material interests. The subtle ferments of education, the impact of the War, and the beginnings of that sense 10 of nationality to which we have already alluded, go far to explain the want of harmony which exists between the present system of government and public opinion in India, so far as the latter is vocal. It may be justly observed that the qualification is a vital one and that there are no means of gauging the opinion of the vast and inarticulate 15 mass of the cultivators who make up nine-tenths of the population and to whom an equitable land revenue settlement and the timely advent of the monsoon are likely for many years to be of greater importance than the most radical political changes. But though Parliament is a trustee for the masses of India and cannot disclaim 20 the responsibilities which it has assumed on their behalf, it would in our opinion he unjust to judge the political consciousness of her people by the standard of the least instructed class

14 No appreciation of the Indian problem would be complete if it Public opmon affected to disregard the want of harmony of which we have spoken 25 Where, as in India, political education has not extended beyond a

class small in comparison with the total population, it may be conceded that alleged manifestations of public opinion are often of doubtful value, nor indeed are there wanting those who would refuse to attribute to them value of any kind. But we are not prepared to admit that over a period of four years the members of three Round 30 Table Conferences and the members of this Committee have listened to the arguments and have shared the debates of men who represented in India no one but themselves. We are satisfied that a public opinion exists in India which it would be a profound error for Parliament to ignore; that the estrangement between that opinion 35 and the present system of government is prejudicial to the interests of both countries; and that a readjustment of relations between the two partners is required.

The moment propitions for a readjustment of relations. 15. The moment is propitious for a readjustment of this kind. For the first time in the history of India, representatives of her 40 Princes and peoples have sat for many months in counsel with representatives of His Majesty's Government and of the great political parties of the United Kingdom; and for the first time in the history of Parliament Indian delegates have taken part in the proceedings of a Joint Select Committee and have illuminated our 45 discussions, even if circumstances forbid them to share our responsibilities. We do not suggest, nor would any Indian claum,

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that the conclusions which emerged from the minute and laborious diligence of the three Round Table Conferences are binding upon the United Kingdom or upon India; but they are not on that account to be neglected or contemned. They are the fruits of an effort which will be deemed as laudable by a future, as it might have seemed incredible to a past, generation, to ascertain whether any substantial measure of agreement was possible upon the principles which should, or might, inform a new Constitution for India. It can scarcely have been supposed by the promoters of those Conferences that the free and infettered discussion of questions so 10 formidable and complex would succeed in producing a complete and harmonious reconciliation of contradictory or at least divergent opinions; but the common measure of agreement achieved must, we apprehend, have exceeded their most hopeful expectations.

Emergence of body of central opinion.

16. We do not wish to imply that any scheme for the future 15 government of India is at present in existence which can be said to have been agreed even unofficially between representatives of the two countries. We realize too that there is a party in India with whom the prospects of agreement of any kind may be remote; but from the discussions and personal contacts of the last four years there has 20 emerged a body of central opinion (for so we may describe it) in the creation of which a juster appreciation by each side of the difficulties and even more of the motives of the other has been perhaps not the least potent influence. This is a new and hopeful phenomenon. It is possible now to distinguish much common ground, where 25 previously the dividing gulf might have seemed unbridgeable; and it will not be denied that, if the movement of British opinion has contributed to this result, so also has that of India. On the common ground thus marked out we believe that the foundations could be laid of a firm and enduring structure.

The Preamble to the Act of 1919.

17. If then we are satisfied, for the reasons which we have given; both that a readjustment is necessary and that the moment for effecting it is propitious, it becomes our duty to consider the form which such a readjustment should take. For this purpose it is well

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35 to recall that the ultimate aims of British rule in India have been often stated and are on record They are set out with precision in the Preamble to the Government of India Act, 1919, which runs as follows -

"Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of 40 Indian administration, and for the gradual development of selfgoverning institutions, with a view to the progressive realization of responsible government in British India as an integral part of the Empire:

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that sub-

stantial steps in this direction should now be taken .

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And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples .

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed.

in their sense of responsibility

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities"

Subsequent declarations have not in our opinion added anything to the substance of this preamble, which is conceived in such wide and general terms that we should hesitate to put any limit upon its implications, save those which necessarily arise from the use of such words as "gradual" and "progressive" We are content,

20 therefore, to take the Preamble as a clear statement of the policy and aims of Parliament in relation to the government of India.

18 The readjustment of the relations between the two partners The Indian ought, in the Indian view, to take the form of the grant forthwith, subject to certain conditions, of responsible government both in the government 25 Provinces and at the Centre There is no date or time-limit mentioned in the Preamble, and on this aspect of the matter, Parhament is bound by no pledges, and is free to make its own decision. It can grant the demand, or it can reject it as premature and unwise, and the grave and difficult task is laid upon us of recommending to 30 Parliament what its choice should be After mature and anxious

deliberation and with a full sense of our responsibilities, we have come without hesitation to the conclusion that it would be wrong and prejudicial to the interests of both countries to reject the Indian claim, and we shall endeavour in the paragraphs which follow to 35 explain and justify that conclusion The quality of the problem,

as we shall indicate, differs in the Provinces and, in the Centre, but there are nevertheless certain general considerations which are applicable to both

19 The demand for responsible government in the Provinces was 40 admitted by the Statutory Commission, and it might be sufficient for us to adopt the arguments which led them to that decision, and from which we see no reason to dissent, but we think it right to add some observations of our own We desire also to make it clear that by

responsible government we mean a form of government in which the executive is in some sense accountable to the Legislature and not one 45 which implies no more than the substitution of Indian Ministers for official Councillors—It has seemed to us that this distinction was not

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always kept in mind by some of the Indian witnesses whom we heard, and, though we can understand prominence being given to the conception of government of Indians by Indians, it is necessary to emphasise that self-government and responsible government are by no means the same thing. We use advisedly the expression "in 5 some sense accountable," lest we should be thought to advocate the adoption in India without qualification of the parliamentary system which obtains in the United Kingdom, a matter to which we propose to make reference subsequently in this Report

Need for encouraging sense of responsibility

20 No Indian Federation is likely in our opinion to become a 10 successful and thriving State unless (so far as British India is concerned) it is based upon autonomous Provincial units with a vigorous and independent political life of their own The present dyarchic system in the Provinces, as the Statutory Commission point out, which was designed to develop a sense of responsibility, has some- 15 times tended to encourage a wholly different attitude A sense of responsibility is an attribute of character, not a garment to be put on or discarded at will It may be strengthened by inherited tradition, but it must be acquired in the hard school of experience, and the Statutory Commission rightly observe that it can only be taught 20 by making men responsible politically for the effects of their own actions It is the misiortune of India that throughout all the centuries which preceded the establishment of the British Raj this doctrine has been unknown or obnoxious to her rulers. Of the mischiefs which have followed and of the effect upon the 25 national character, it is unnecessary to speak, but it is not for us to complain if Indians now seek to apply a remedy which they have learned from an attentive study of our own history, and which indeed we have held out to them as the ultimate view of our policy in India We do not think that the opportunity ought any longer to 30 be demed them

Responsible povernment and social reform.

21 Secondly, we are convinced that progress in one direction of supreme importance to India can only be achieved under a system of responsible government. We may indeed legitimately claim that for the greater part of her material and intellectual progress she is 35 mainly indebted to British rule, which has also ensured the order and tranguillity without which no progress of any kind is possible. But from one aspect of Indian life Government has deliberately stood aside it has followed a policy of neutrality and non-interference in all matters which touch the religions of India. It is not difficult 40 to justify that policy, whether on grounds of expediency or on other grounds, but so closely are the habits and customs of the people bound up with their religious beliefs that the effect has been to put grave obstacles in the way of social legislation by the Government of India in a sohere of immense and growing importance. In no 45 other sphere, as all thoughtful Indians recognise, is the need for social reform more urgent and vital, yet Government is debarred.

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by the considerations we have stated, from effective interference in such matters as child marriage or the appalling problem of the untouchables There are fetters which only Indian hands can strike

off; and we can do no more than give Indian reformers the oppor-5 turnty themselves of attempting the task. We are under no illusions as to the difficulties and obstacles which they are likely to encounter, but we are clear for the reasons which we have given that under responsible government alone can the attempt be made with any prospect of success.

22. Lastly, we cannot ignore the swift march of events during the Unwadom of last few years. We have already spoken of the manner in which representatives of India have been willing to co-operate with men of expectations. this country for the purpose of reaching some common measure of agreement and of the success which, as it seems to us, has attended 15 their efforts. It would be a matter of profound regret to us if the truits of this co-operation were abandoned or at least treated as of little account. The singular change which has come over the Indian political scene is as encouraging as it is impressive; and the evidence satisfies us that it is due in large part to the belief of Indians that the 20 joint lahours of the last four years will not be thrown away. We cannot take the responsibility of recommending to Parliament a

course of action which would not only disappoint a helief so strongly and universally held, but which we are convinced would also produce most unhappy consequences. It will be said that this is an 25 argument of mere expediency, but we do not so regard it. We see the opportunity of terminating an estrangement between the two countries which, if it is allowed to continue, can bring nothing hut harm to both of them. The material interests at stake are not inconsiderable, and Parliament will rightly desire to take them into

30 account; but the other factors to which we have drawn attention seem to us not less vital hecause imponderable and we helieve that an even greater importance is to be attributed to them.

23. Much of what we have said applies equally to the Centre Special problem and to the Provinces, but the problem of responsibility at the at the Craire. 35 Centre raises grave issues of its own. We do not forget that the Statutory Commission were unable to convince themselves that this further step was justified at the time when they made their Report, and we cannot lightly put aside the reasons which led them to that conclusion. It is admitted by responsible Indian leaders that 40 whatever form the Central Government may take, the defence and external relations of India must for the time being remain the exclusive responsibility of the Governor-General. Hence any measure of responsible government at the Centre must involve a system of dyarchy; but the Statutory Commission held strongly the view 45 that a unitary government at the Centre was essential and should he preserved at all costs. "It must be a government", they wrote, "able to hear the vast responsibilities which are cast upon it as the

disappointing

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central executive organ of a sub-continent presenting complicated and diverse features which it has been our business to describe"; and they expressed the opinion that a plan based on dyarchy was unworkable and no real advance in the direction of developing central responsibility at all. To this we might add that what we have ourselves said above on the subject of dyarchy in the Provinces appears at first sight to be wholly inconsistent with any contrary view.

24. We recognise the force and weight of all these arguments, The change but we have to deal with a state of things which did not, and indeed effected by the 10 could not, enter into the consideration of the Statutory Commission the Process when they reached their decision on this matter. Their examination of the problem was prosecuted at a time antecedent to the declaration

by the Princes of their willingness to enter an All-India Federation, and, though they looked forward to such a Federation in the future, and indeed so framed their recommendations as to prepare the way 15 for it, they had no choice but to deal with things as they then were and not as they might afterwards become. We, on the other hand, have to take into account as a new factor, the declaration of the Princes that they are willing now to enter into an All-India Federation, but subject always to this condition, that the Federal 20 Government is a responsible and not an irresponsible government. The importance of this declaration cannot be over-estimated, and if the choice is to be made between a responsible government at the Centre with the accession of the Princes and a continuance of the present system (even with some modification) without them, 25 we cannot doubt what the choice would be. The Indian States, both geographically and economically, are an integral part of India, and as the Statutory Commission observe, there are few subjects which should form the field of activity of a central government in India which do not interest also the States. Their accession 30 to an All-India Federation will in our opinion be found to be no less to their own advantage than it will undoubtedly be to the advantage of India as a whole; but apart from this they have a special contribution of their own to make. They will strengthen the association between India and the Crown; and we are also 35 persuaded that they will introduce into the new Constitution a cautious and conservative element, with a practical experience in the problems of government, which will make for sobriety and stability in Indian politics of the future.

The arguments of the Statutory Commission.

25. Our recommendation then is conditional upon the accession 40 of the Princes; and if we are asked what the position would be, if the Princes should resile from their declaration, we can only reply that in that event, which happily there is no reason to contemplate, we are unaware of any pledges which bind either Parliament or His Majesty's Government, and that the matter will 45 be at large. But the problem of dyarchy at the Centre remains, and the objections to it so strongly urged by the Statutory Commission have still to be considered. In our opinion a system of dyarchy

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at the Centre such as we propose is not open, at least in an equal degree, to the criticisms levelled against it in the Provinces. There is only an imperfect analogy between the reservation of defence or external relations and that of the present reserved subjects in the Provincial sphere. In the Provinces the administration of the reserved subjects touches so closely that of the subjects transferred to Ministers that an administrative decision in one field may profoundly affect decisions in another, and a division of responsibility cannot fail to have perplexing consequences. Contact between the subjects of defence or external relations and the range of subjects 10 which, if our recommendations are accepted, would fall within the sphere of Ministers at the Centre is, if not remote, at least not a matter of daily occurrence. It is no doubt true that the Army at the Centre and police in the Provinces are both concerned with the preservation of order, but their functions in this respect differ so 15 widely that administratively they present far more points of contrast than of likeness. We do not by any means overlook the question of finance or the reactions of the Army budget upon the finance of the central administration; but here again no question arises of a constant impingement of one administrative sphere upon the other. 20 Lastly, it is reasonable to suppose that the interest of the Princes in

all matters relating to the defence of India will make them unwilling to support any action tending to blur the responsibility of the Governor-General in this field or to become parties to ill-conceived 25 criticism of his administration of the reserved departments. We arc led to the conclusion, therefore, that the objections of the Statutory Commission are not in themselves an insuperable bar to the grant of responsible government even at the Centre, and we are not satisfied that the sacrifice of unity will render impossible the establishment of 30 an efficient central executive.

26. As our enquiry has proceeded, we have been increasingly Present relations between impressed not hy the strength of the Central Government as at Government present constituted, hut hy its weakness. It is confronted by and Leghiature. a Legislature whose members are unrestrained by the knowledge that 35 they themselves may be required to provide an alternative government, whose opinions are uninformed by the experience of power, and who are prona to regard support of government policy as a betrayal of the national cause. It is ahundantly clear from the political history of the last twelve years that criticism by the Assembly has 40 constantly influenced the policy of government; if the tendency of that criticism has been mainly destructive, this has been mainly dua to the circumstances which we have just described. As a result, the prestige of the Government has been lowered, and disharmony between Government and Legislature has come to be regarded as, 45 an incvitable feature of their relationship. If this has been the case under existing conditions, we cannot doubt that the position would deteriorate still further if an irresponsible Centre were to be superimposed upon a number of autonomous Provinces.

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27. It has been made clear to us that, with few exceptions, Indians Difficulty of of every shade of political opinion have come, rightly or wrongly, to regard a measure of responsible government at the Centre as the hallmark of nationhood, and as a thing vital to the status and self-5 respect of India. If these hopes and desires were now to be thwarted by the limitation to the provincial field of the principle of responsibility, we think the consequences would be disastrous alike in the Provinces and at the Centre. We apprehend that the centrifugal forces latent in all federal constitutions would be dangerously 10 increased, and that if an irresponsible Centre were to coma into conflict with autonomous Provinces upon an issue where the popular cause was championed by the Provinces, there might emerge a state of affairs which would threaten nothing less than the integrity of the Federation. Nor could we hold it reasonable to contemplate the 15 successful coercion, by an irresponsible Central Executive, of autonomous Provinces whose governments enjoyed the full support of public opinion and of the Legislatures, both Central and Provincial.

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28. Two qualities must attach to a successful Constitution: the Requirements first, that it should he workahle; the second, that those to whom it is Constitution. 20 offered should be prepared to make it work. For the reasons we hava given, we think that any Constitution will be found to he lacking in hoth these requirements which proposes, as a permanent arrangement, the co-existence of an irresponsible Central Executiva with a number of autonomous Provinces in which responsible government has been 25 established. In our view the grant of some measure of responsibility at the Centre is an act not of rashness but rather of wise and prudent statemanship, and we are unable to resist the conclusion that those who have been moved to take a contrary view hava failed in a just appreciation of the realities and values of the situation.

British conception of parliamentary government.

29. We have said above that by responsible government we mean 30 a form of government in which the executive is in some sense accountable to the Legislature, and we are here faced by a grave and difficult problem. It is not unnatural that, in the words of the Statutory Commission, most of the constitutional schemes propounded by Indians should closely follow the British model, nor can Parliament 35 be insensible to the compliment implied by such a preference at a time when the principles of parliamentary government have been successfully challenged in many parts of Europe and are regarded with suspicion or doubt in others. But the successful operation of parliamentary government postulates beyond question the existence 40 of certain essential conditions. It has been observed by a statesman of our own time, whose liberal sympathies and whose knowledge of the working of democratic institutions will be questioned by none, that "the English constitution, which we admire as a masterpiece of delicate and complicated mechanism would anywhere but in 45 England he full of difficulties and dangers . . . it works hy a body of understanding which no writer can formulate and of habits which centuries have heen needed to instil." We think that

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Lord Bryce would not have denied that the understanding and habits of which he speaks are in the main the creation of, as they have in their turn helped to promote, the growth of mutual confidence between the great parties in the State and of the fundamental belief, transcending the political differences of the hour, which each 5 has come to repose in the good faith and motives of the other. Many causes have contributed to this result, which has not been achieved without stress and effort, and even civil conflict; and we shall be chary of giving credit to race or temperament for national characteristics which perhaps with equal justice may he attributed 10 to the bappy accident that we inhabit an island, and that for nearly a thousand years our political evolution has been undisturbed by the fact, and scarcely even by the menace, of foreign invasion.

Resentials of purliamentary government.

30. Parliamentary government, as it is understood in the United Kingdom, is based essentially on the principle of majority rule, and 15 majority rule is not a working principle of government, unless the minority for the time being are willing to accept, or at least to acquiesce in, the decisions of the majority. The existence of organised political parties, each able and willing to take over the responsibilities of government when the time arrives, is perhaps so 20 necessary for the efficient working of the system that it may also be regarded as an essential element in it. It is nevertheless a singular paradox that in England the party system is a successful instrument of government mainly because there is always a large hody of opinion which owes no permanent allegiance to either party, hut 25 gives its support in a greater or less degree to each party in turn; and it is this body of opinion which, reacting instinctively against extravagant movements on one side or the other, preserves an equipoise and tends always to bring the vessel back to an even keel. In the absence of a central balancing force of this kind, there must 30 always he the danger of a permanent majority and a permanent minority; and since no room is then left for compromise or adjustment, violent stresses are set up which, unless corrected or restrained, are sufficient to disrupt and even to destroy the State.

Orficulties of the problem n India. 31. There are in India no parties as we understand them, and no 35 mobile body of political opinion such as we have described. In their place we are confronted with the secular antagonism of Hindu and Muhammadan, representatives not only of two religions but of

two civilisations; with numerous self-contained and exclusive 40 minorities, all a prey to anxiety for their future and profoundly suspicious of the majority and of one another; and with the rigid and immutable divisions of caste, itself a denial and repudiation of every democratic principle. The only forces making for homogeneity or solidarity which we are able to discern are the beginnings of the 45 idea of Indian nationality which we have already mentioned, and possibly also the sense of provincial citizenship, which in some Provinces, and perhaps in all is of real and growing significance.

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But none can predict whether either of those forces will in the end prove strong enough to absorb and obliterate the religious and racial cleavage, which indeed tends to become more and more acute with each successive transference of political power into 5 Indian hands. Communal representation must be accepted as inevitable at the present time; but it is a strange commentary on some of the democratic professions to which we have listened.

32. We lay stress on these matters because in truth they are of the A middle essence of the problem, and we should be doing no good service to 10 India by glozing them over or concealing them. It is wiser to face the facts. Things are what they are and not other things; and it cannot in the circumstances be a matter for surprise that many are to be found who, with every sympathy for Indian aspirations, declare that responsible government is on practical grounds an 15 impossibility in India. We have come nevertheless to a different conclusion. We recognise the difficulties and we desire that they should be recognised by Indians themselves We recognise also that if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, 20 the consequences might be disastrous to India and perhaps irreparable. But there is a middle course, and we are thus led to a consideration of what have come to be known as "safeguards."

33. We confess that we do not greatly care for the expression, Safeguards since it has been constantly misinterpreted as implying an unreason-25 able insistence upon the need for protecting British, at the expense of India borself. Indian, interests, and upon a selfisb reservation of powers wholly inconsistent with responsible government. Nothing could be further from the truth; not only are safeguards such as we contemplate not inconsistent with some form of responsible government, but in the 30 present circumstances of India it is no paradox to say that they are the necessary complement to any form of it, without which indeed it could have little or no hope of success. It will be found that the grant of responsible government to almost all British communities has been accompained by safeguards of some kind, varying according 35 to the circumstances of the community; and it is in exact proportion as Indians show themselves to be not only capable of taking and exercising responsibility but able to resolve the difficulties of which we have spoken that both the need for safeguards and their use will disappear. Those difficulties have neither been created, nor can they 40 be resolved, by Parliament; they are inherent in the conditions of India: and if their existence necessarily qualifies the grant of responsible government, it is not on Parliament that criticism should fasten. We propose to examine later in this Report the nature of the safeguards suggested by His Majosty's Government, and it is sufficient 45 here to say that we could not recommend Pailiament to approve an experiment, which we recognize to be not without risk and even danger, unless provision were made, so far as can reasonably be

done for securing the conditions which in our opinion will alone make

necessary in the interests of

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it possible for the experiment to succeed at all. We therefore think it right to formulate what seem to us to be the essential elements in any new constitutional settlement.

Need for flexibility a

34. One essential element is flexibility, so that opportunity may be afforded for the natural processes of evolution with a minimum of alteration in the constitutional framework itself. The deplorable and paralysing effect of prescribing a fixed period for constitutional revision requires no comment in the light of events since 1919; but we are also impressed with the advantage of giving full scope for the development in India of that indefinable body of understanding, of 10 political instinct, and of tradition, which Lord Bryce, in the passage which we have quoted, postulates as essential to the working of our own constitution. The success of a constitution depends indeed far more upon the manner and spirit in which it is worked than npon its formal provisions. It has been observed by an English judge that in- 15 sistence by everyone upon their strict legal rights would make the world an intolerable place, and the observation is peculiarly appropriate in the constitutional sphere, where theory may prove stenle and even dangerous unless expanded or adapted by an accepted body of usage and practice. The new Indian Constitution 20 must contain in itself the seeds of growth. It is impossible to foresee, so strange and perplexing are the conditions of the problem, the lines which constitutional progress will eventually follow; and it is, therefore, the more desirable that those upon whom responsibility will rest should have all reasonable scope for working out their own 25 salvation by the method of trial and error.

or a strong Executive :

35. Next, we desire to emphasize the necessity for securing a strong Executive both in the Provinces and at the Centre. We have little to add to what the Statutory Commission have written on this point, and in our judgment they do not exaggerate when they say 30 that nowhere in the world is there such frequent need for courageous and prompt action as in India and that nowhere is the penalty for hesitation and weakness greater. We do not doubt that Indian Ministers, like others before them, will have ample opportunities for realisting the truth of this and of learning the lesson which it teaches. 35 But, since we see no prospect for some time to come of Ministries united by a common political faith and supported by an organised and disciplined party, we do not think that the risk of divided counsels and therefore of weakness in action is one which can be ignored. There must, therefore, be (to quote again the Statutory 40 Commission) a power which can step in and save the situation before it is too late; there should be the fullest scope for self-government but, if there is a breakdown, then an alternative authority must operate unhampered. Such intervention ought nevertheless to take place only as a last resort, and must not be regarded as part of the 45 normal machinery of government; otherwise we see a risk that it may be invoked for the purpose of disclaiming responsibility in cases where it is above all things necessary that those on whom the primary

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responsibility is imposed should be ready and willing to bear it. Nor ought the Executive to be entirely at the mercy of the Legislature. We have no wish to under-rate the legislative function; but in India the executive function is in our judgment of over-riding importance. In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures and the

threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a newly elected Legislature will often have the same com-10 plexion as the old. We touch here the core of the problem of responsible government in the new Indian Constitution, and we shall examine it in greater detail later in our Report.

36. No less important than a strong Executive is the maintenance for efficient administration; the backbone of all good administration; of a pure and efficient administration, the backbone of all good government. The establishment of a public service, at once disinterested and incorruptible, is not the least of the benefits which British rule has given to India, and it is perhaps the most prized. We do not doubt that here and there in the lower official ranks the belief may still persist, an unhappy legacy of the misgovernment 20 of the past, that office is a source of profit and corruption a venial thing; and it would be surprising if it were otherwise, for the habits of centuries are not so easily cradicated. We have ample proof, however, that Indian officials who occupy responsible positions hold as dear as any of their British colleagues the standards 25 and traditions of the services to which they belong, and we see no reason why under a new order the standards should become lower, or the traditions lost. But the efficiency of a service is no less vital than its honesty. In no country perhaps does the whole fabric of government depend to a greater degree than in India upon its administration; 30 and it is indeed literally true, as the Statutory Commission observe, that the life of millions of the population depends on the existence of a thoroughly efficient system. But no service can be efficient if it has cause for anxiety or discontent. It is essential therefore, in our judgment, that those whose duty it is to work this system should be 35 freed from anxiety as to their status and prospects under the new Constitution, and that new entrants should not be discouraged by any apprehension of inequitable treatment. We have every hope that such anxietties or apprehensions will prove unfounded, but they may be none the less real on that account; and, so long as 40 they exist, it is necessary that all reasonable measures should be

taken to quiet them. 37. Lastly, we record our conviction that the existence of an for an impertial authority in India, armed with adequate powers, able to hold the dislaterested scales evenly between conflicting interests and to protect those authority. 45 who have neither the influence nor the ability to protect themselves, will be as necessary in the future as experience has proved He would be a bold man who would prophesy it to be in the past.

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the direction or effect of the new political forces in India, whether they will heal or accentuate existing divisions, whether they will promote toleration or encourage intolerance. Other, and perhaps most, peoples have achieved unity only after prolonged and often 5 sanguinary internal conflict. We have rightly insisted in India upon a different solution; but if we have for that reason changed or deflected the natural processes of historical evolution we have also assumed the responsibility of ensuring that the experiment is conducted with justice towards all and with malice towards nonc.

38. Such in our opinion are the essential elements in a new Disusc of Constitution for India, which any safeguards proposed, by whatever sefeguards the name they are called, should be designed to secure; and when we their success. come to examine those which have been suggested by His Majesty's Government, their efficacy for this purpose will be the test by which 15 we shall judge them. Seen in their proper perspective, they will

promote and not hinder a normal constitutional development, but we are none the less persuaded that no constitutional development is possible without them. They are at once the background of the experiment and the condition of its initiation; and the extent to which they are found unnecessary will be the true measure of its 20 success.

Consequences of the alternative solution.

39. We desire to touch npon one or two broader issues before concluding this part of our Report. We are not so vain as to suppose that our recommendations will secure unanimous approval; but we would invite those who differ from us to consider very earnestly 25 the possible alternatives. No one bas suggested that any retrograde step should be taken, very few that the existing state of things sbould be maintained unaltered; and the necessity for constitutional advance, at least within the limits of the Statutory Commission's report, may therefore be regarded as common ground. 30 The question of responsibility at the Centre thus becomes the essence of the problem. But if that question should be determined in the negative, Parliament must be prepared to face the inevitable consequences, two of which in our opinion transcend all the others in importance; first, the Princes' declaration will no longer hold 35 good, and the prospect of an All-India Federation disappears, perbaps for ever, but certainly for many years to come; and, secondly, the co-operative efforts of the last few years and that body of central opinion which we have described and which has seemed to us so vital and bopeful an element in the future relations 40 of the United Kingdom with India are irretrievably destroyed. These are grave issues. We should hesitate to forecast all the effects of the Princes withdrawal or the dissipation of Indian confidence, but of this we are very certain, that the difficulties of the Government of India would be increased almost to breaking point and that it 45 would have to discbarge its heavy responsibilities without the support of any section of Indian public opinion. We do not say that the

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task would be impossible, but we confess that we should shrink from the deliberate thrusting upon any government of so grievous a burden.

Lord Macaulay's positions.

40. A policy with consequences such as these is one which we could never recommend to Parliament, nor can we believe that Parliament, weighing its own responsibilities to India, would willingly accept it. We cannot indeed complain if those whom we fail to convince lay stress upon the possible consequences of another policy. It bas been, and will be, urged that no Dominion has ever been faced within its border at one and the same time with all the problems with which 10 India has to deal; with the ever present risk of bostilities on ber frontier; with the cleavage between communal interests; with innumerable differences of race and speech; with a financial system largely dependent for its credit on centres outside India; and with a vast population in every stage of civilisation. All these things 15 are true, and yet even the sum of them does not seem to us to conclude the argument. An answer has still to be found to the questions asked a century ago by a great servant of India, in a speech of which it was said that to have heard it might console the younger members of the House for never having beard Edmund 20 Burke: "Do we think that we can give the people of India knowledge without awakening ambition? Or do we mean to awaken ambition and provide it with no legitimate vent?" The answer has now to be given: and we hold strongly that it is more consonant

25 with the dignity of Parliament and with the traditions of the British people, if, when the time has come for Parliament to share its power with those whom it has sought to train in the arts of government, it should do so not ungraciously nor in any grudging spirit.

41. There are moments in the affairs of nations when a way is The United 30 opened for the removal of long-standing differences and misunder- India. standings and for the establishment between people and people of new relations more in harmony with the circumstances of the time than those which they replace. Adjustments of this order, when they involve a transference of political power, must inevitably 35 provide a sharp test of national character; and the instinct for the time and manner of the change is the sure mark of political sagacity and experience. If there are those to whom the majestic spectacle of an Indian Empire make so powerful an appeal that every concession appears almost as the hetrayal of a trust, we would ask them 40 to look at the other side of the picture, different indeed in content, but not less charged with realities. India also has a right to be heard before judgment is pronounced; and her plea to be allowed the opportunity of applying principles and doctrines which we ourselves have taught cannot be met by a simple traverse or by a 45 denial of her interest in the cause.

42. It has seemed to some that to permit India to control her India and the Crown. own destiny is to sever the tie which unites her to the Crown and to the United Kingdom. Never could we contemplate the rupture of

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that beneficent and honourable association; but we believe that a union of partners may prove an even more enduring bond. do not deny that the creation of an Indian Empire has profoundly affected the position of the United Kingdom and has magnified its influence in the affairs of the world; but we do not think that the selfish or vainglorious element predominates in the pride which this country takes in the work accomplished. The best of those who were and are responsible for it have ever regarded themselves as the servants of India and not merely as the agents of a foreign power; morals we drawed that it comit not have been as rich through without the co-operation of Indian hands. It has not needed our enquiry to remind us how great a place India fills in our own history. There is no part of His Majesty's dominions with the same power to recall memories or to stir emotions, and none with so great a succession of warriors and administrators, by the story of whose achievements our hearts are still moved, as Sir Philip Sidney by the song of Percy and Douglas, more than with a trumpet. But the whole earth is the sepulchre of famous men, and those of whom we speak are now become a part no less of India than of English history. arduous and patient labours founded a new and mighty State; and it is upon the foundations which they have laid that, as we hope, an Indian Federation will be built, in which under the Crown the people of India will find political contentment as well as scope for the free and orderly growth of national life.

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#### PART II

# THE WHITE PAPER

The Committee's

43. Our terms of reference direct us to consider the future government of India and in particular to examine and report upon the proposals in Command Paper 4268, commonly known as the White Paper. The latter, in fact, embodies a complete scheme for Indian constitutional reform; and we have found it convenient to make it the basis of our deliberations, though we have not in any way restricted them to the proposals which it contains. In these circumstances it has appeared to us equally convenient to take the 10 White Paper, which in any case we have been directed to examine and report upon, as the general hasis of this Report, and to set out our recommendations as to the future government of India in the form of a commentary upon the White Paper scheme.

Arrangement of White Paper.

44. The proposals in the White Paper fall under three main heads, 15 which have been commonly referred to as Provincial Autonomy, Federation and Responsibility at the Centre. The terminology is not very happy, but is well enough for the present purpose, and we shall not he misunderstood if we adopt it as a provisional description. It is our intention to examine the principles which underlie these 20 proposals and to state certain general conclusions at which we have arrived, and thereafter to examine separately the proposals in relation to the following complementary or subsidiary matters: - Distribution of Legislative Powers, Finance, the Services, the Judiciary, Commercial Discrimination, Constituent Powers, the Secretary of State 25 and the Council of India, the Reserve Bank, the Future Administration of Indian Railways, Audit and Auditor-General, Advocates-General, and Transitory Provisions. This appears to us the more convenient course to adopt, in order that the essential elements of the scheme put forward by His Majesty's Government may be seen 30 in their proper perspective, unobscured by the mass of detail which the White Paper necessarily contains.

Borne

45. The proposals in the White Paper do not deal specifically with the question of Burma in relation to Indian constitutional problems, because opinion in Burma on the future of the country had not at 35 the date of the issue of the White Paper become crystallized. The Statutory Commission recommended that Burma should cease to be a part of British India, and we have arrived at the same conclusion. In these circumstances it is our intention to deal fully with the future constitution of Burma in Part III of our Report, where we 40 shall set out and discuss the reasons which have appeared to us to justify our recommendation.

# Page 22 I.—PROVINCIAL AUTONOMY

#### (1) THE AUTONOMOUS PROVINCES

Definition of Provincial

46. The scheme of Provincial Autonomy, as we understand it, is one whereby each of the Governors' Provinces will possess a Governor and Legislature having exclusive authority within the province in a 5 precisely defined sphere, and in that sphere free from all control (or practically all control) by the Central Government. This we conceive to be the essence of Provincial Autonomy, though no doubt there is room for wide differences of opinion with regard to the manner in

10 which that exclusive authority is to be exercised. It represents a fundamental departnre from the present system, under which the Provincial Governments exercise a devolved and not an original authority. The Act of 1919 and the Devolution Rules made under it, by earmarking certain subjects as "provincial subjects," created 15 indeed a sphere within which responsibility for the functions of government rests primarily upon the provincial authorities; but that responsibility is not an exclusive one, since the Governor-General in Council and the Central Legislature still exercise an extensive authority throughout the whole of the Provinces. Under 20 the proposals in the White Paper, the Central Government and Legislature would, generally speaking, cease to possess in the Governors' Provinces any legal power or authority with respect to

any matter falling within the exclusive Provincial sphere.

47. "The Provinces are the domain," wrote the authors of the 25 Montagu-Chelmsford Report, "in which the earlier steps towards the progressive realisation of responsible government should be taken. Some measure of responsibility should be given at once, and our aim is to give complete responsibility as soon as conditions permit." Their intention was to give an independent life to the organisms

30 which would in future form the members of a British India Federation, an ideal at that time not within measurable distance. To-day, so rapid has been the march of events since 1919, we are discussing not only a Federation of British India, but an all-India Federation; and we could not ourselves contemplate such a Federation, whether

35 it comes about in the immediate or more distant future, which in its British India aspect is composed of other than autonomous units, independent within their own sphere of any central control. We have arrived, therefore, at the same conclusion on this subject as the Statutory Commission, and substantially on the same grounds.<sup>1</sup>

40 Of all the proposals in the White Paper, Provincial Autonomy has received the greatest measure of support on every side. economic, geographical, and racial differences between the Provinces on the one hand and the sense of provincial individuality on the

1 Report, Vol. II, para. 27.

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other, have greatly impressed us. The vast distances of India and the increasing complexity of modern government are strong additional arguments in favour of the completion of the process begun in 1919, and of a development in which the life of each Province 5 can find vigorous and adequate expression, free from interference by a remote central government. We proceed, therefore, to consider the manner in which the proposals of His Majesty's Government give practical effect to the autonomy principle.

# The Ambit of Provincial Autonomy

48. The first problem is to define the sphere within which Provincial Distribution of Autonomy is to be operative. The method adopted by the White Paper (following in this respect the broad lines of Dominion Federal Constitutions) is to distribute legislative power between the Central and Provincial Legislatures respectively, and to define the Central and 15 Provincial spheres of government by reference to this distribution.2 In Appendix VI, List II, of the White Paper are set out the matters with respect to which the Provincial Legislatures are to have exclusive legislative powers, and the sphere of Provincial Autonomy in effect comprises all the subjects in this list. The subjects in List II (the 20 exclusively Provincial List) represent generally with certain additions

The principle accepted.

legislative powers betw Centre and

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those which the Devolution Rules under the Act of 1919 earmarked as 'provincial subjects' and we are of opinion that in its broad outline the List provides a satisfactory definition of the provincial sphere. We shall have certain suggestions and recommendations to make later, when we come to consider the List in detail, and there are 25 a few subjects included in it with regard to which a complete provincialization might, as it seems to us, be prejudicial to the interests of India as a whole. It will, however, be convenient to leave this aspect of the matter for subsequent examination.

Concurrent legislativa powers. 49 There is, however, another List (Appendix VI, List III), in 30 which are set out a number of subjects with respect to which it is proposed that the Central Legislature shall have a power of legislating concurrently with the Provincial Legislatures, with appropriate provision for resolving a possible conflict of laws <sup>1</sup> Experience has shown, both in India and elsewhere, that there are 35 certain matters which cannot be allocated exclusively either to a Central or to a Provincial Legislature, and for which, though it is often desirable that provincial legislature should make provision, it is equally necessary that the Central Legislature should also have a legislature jurisdiction, to enable it in some cases to secure uniformity 40 in the main principles of law throughout the country, in others to guide and encourage provincial effort, and in others again to provide remedies for mischiefs arising in the provincial sphere but extending or liable to extend beyond the boundaries of a single Province Instances

1 White Paper Proposal 111 112 White Laper, Proposal 114

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of the first are provided by the subject matter of the great Indian Codes, of the second by such matters as labour legislation, and of the third by legislation for the prevention and control of epidemic disease. It would in our view be disastrous if the uniformity of law which the Indian Codes provide were destroyed or whittled away by the uncoordinated action of Provincial Legislatures. On the other hand, local conditions necessarily vary from Province to Province, and Provincial Legislatures ought to have the power of adapting general legislation of this kind to meet the particular circumstances of a Province.

rovincial egislation to neet local equirements

50 We had at first thought that the case could he met hy so defining the powers of the Central Legislature as to restrict its competence in this sphere to the enacting of hroad principles of law, the Provincial Legislatures heing left to legislate for the Provinces within the general framework thus laid down We are, 15 however, satisfied that, with regard at any rate to some of the subjects in List III the local conditions in a Province may require the enactment of legislation modifying a general law applicable to the Province, and that the power of enacting complementary legislation alone would not suffice If it he said that this difficulty 20 could he met hy entrusting the Central Legislature with the power themselves to legislate for the purposes of meeting the particular needs of a single Province, our answer would be that it is wrong in principle to give the Central Legislature power to enact legislation for one Province only, on a matter which ex hypothess must 25 necessarily be one of exclusively local concern. There is no analogy between local legislation enacted by the Parliament at Westminster at the instance of a single local authority, and a power to legislate for an autonomous British India Province Nor can we disregard the obvious fact that the necessity for obtaining Central legislation 30

might in practice cause grave difficulties to a Province, especially in cases where the demand for an amendment of the law is immediate and urgent

51. The White Paper proposes that where there is conflict between Conflicts of law 35 the Central and Provincial legislation with respect to a subject field comprised in List III, the Central Legislation shall prevail, unless the Provincial legislation is reserved for and receives the assent of the Governor-General 1 This appears to us an appropriate device for effecting a reconciliation between the two points of view, and it has 40 the further ment of avoiding the legal difficulties to which any attempt further to refine the definitions in Part III for the purposes of distributing the legislative power between the Central and Provincial Legislatures would of necessity create We, therefore, approve the principle of the Concurrent List, though we reserve for subsequent 45 consideration the question of the particular subjects which in our opinion ought to be included in it

4 White Paper, Proposal 114

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52 We have pointed out above that in List II are set out the The rendinary legalative power matters with respect to which the Provincial Legislatures are to have exclusive legislative powers and that, generally speaking, this List provides a satisfactory definition of the provincial sphere List I in 5 Appendix VI similarly sets out the matters with respect to which the Central Legislature is to have exclusive legislative powers, and these two Lists (together with the Concurrent List) are so widely drawn that they might seem at first sight to cover the whole field of possible legislative activity, and to leave no residue of 10 legislative power unallocated It would, however, be beyond the skill of any draftsman to guarantee that no potential subject of legislation has been overlooked, nor can it be assumed that new subjects of legislation, unknown and unsuspected at the present time, may not hereafter arise, and therefore, however carefully the 15 Lists are drawn, a residue of subjects must remain, however small it may be, which it is necessary to allocate either to the Central Legislature or to the Provincial Legislatures The plan adopted in the White Paper is that the allocation of this residue should be left to the discretion of the Governor-General, and settled by him ad hoc 20 on each occasion when the need for legislation arises

53 We cannot regard this plan as a satisfactory one, though it Cleavage of may be inevitable. We gathered from our discussions with the opinion in India. Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of residuary legislative powers, one 25 school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, bolding not less strongly that they should be allocated to the Provinces In these circumstances the proposals of His Majesty's Government are obviously in the nature of a compromise 30 It will be observed that, for the purpose of reducing the residuary powers to the smallest possible compass the lists of subjects dealt with in List I and List II respectively are necessarily of great length and complexity, but that if it had been possible to allocate residuary legislative powers to e g the Provinces, only a list of Central powers 85 would have been required, with a provision to the effect that the legislative powers of the Provinces extended to all powers not expressly allocated to the Centre, and conversely, if the residue had been allocated to the Centre. This broadly is the plan which has been adopted in Canada and Australia, the residuary powers being vested,

in the case of Canada, in the Dominion Legislature, and, in the case 40 of Australia, in the Legislatures of the States Experience has unhappily shown that even so it has been impossible to avoid much hitigation on the question whether legislature or a particular subject falls within the competence of one Legislature or the other, and it is only too clear that the possibility of litigation is immensely increased 45 by the plan adopted in the White Paper. The more the two Lists enter into detail, the greater that possibility must be, and yet, if the principle of two Lists is accepted, we do not see how this detailed statement of legislative powers can well be avoided.

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Difficulty of rejecting White Paper proposal

54 We do not doubt that these difficulties were as present to the minds of His Malesty's Government as they are to our own, and we fully appreciate the reasons which have led them to adopt a plan on which criticism can so readily fasten. We are unwilling, therefore, to recommend an alteration in the White Paper proposal, though we have not overlooked the scope for hitigation which two long and detailed lists, each defining an exclusive legislative jurisdiction, must afford. It seems to us that the logical conclusion of the proposals in the White Paper would be the allocation to the Provincial Legislatures of all legislative powers (apart from those included in 10 the Concurrent List) which are not expressly assigned to the Central Legislature; but we recognise that logic is not always a safe guide where an apparently irreconcilable difference of opinion exists between the great Indian communities on a matter which both of them appear to regard as one of principle.

# Existing and Future Governors' Provinces

The present Governous Provinces, 55 The existing Governors' Provinces are the Presidencies of Bengal, Madras and Bombay, and the Provinces known as the United Provinces, the Punjah, Bihar and Orissa, the Central Provinces, Assam, the North-West Frontier Province, and Burma We have 20 considered the problem of Burma in a separate part of our Report, and it is unnecessary to say more in this place than that we have come to the conclusion that Burma should cease to be a part of British India. The White Paper proposes that there shall in future be a new Province of Sind and a new Province of Orissa, the former 25 being carved out of the Presidency of Bombay, and the latter mainly out of the Province now known as Bihar and Orissa, but also including a portion of what is now Madras territory, and a very small area from the Central Provinces

Smd.

56 On the constitution of Sind as a separate Governor's Province, 30 we quote the following passage from the Statutory Commission's "We have great sympathy with the claim, but there are grave administration objections to isolating Sind and depriving it of the powerful backing of Bombay before the future of the Sukkur Barrage is assured and the major readjustments which 35 it will entail have been effected. Even if it were held that the time is tipe for the separation of Sind to be senously considered there would have to be a close and detailed enquiry into the financial consequencer which would follow from such a step before a decision could be taken " When this opinion was recorded the Barrage 40 was still under construction, but it is now completed and successfully in operation, though the general fall in agricultural prices has necessarily affected the financial position The financal difficulties involved in the creation of an autonomous Sind have been examined first by an expert committee and later by a conference 45

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of representatives of Sind presided over hy an official, and the findings of both Committees have been reviewed by the Government of India and hy His Majesty's Government. We are informed that it is now anticipated that the new Province would start with 5 an initial yearly deficit of about \( \frac{1}{2} \) crore, which would be gradually extinguished in about 15 years, and that after that period the Province should he able to dispense with assistance. We discuss elsewhere the effect of the separation of Sind from Bombay upon both Central and Bomhay finances, and it is sufficient to say here 10 that the difficulties do not appear to he of such magnitude as to form any insuperable bar to the establishment of a separate Province

57 The difficulty of administering from Bombay a territory racially Case in and geographically separated from the rest of the Presidency has Bombay. proved capable of heing overcome under present arrangements. 15 hut the case for separation, which is strong under any form of administration, is greatly strengthened if the administration of Bombay is transferred over to an Executive responsible to the Legislature The question is, however, one which has aroused acute communal controversy. The case for separation has been pressed not 20 merely by the Sindi Muhammadans but also by Muhammadan leaders

elsewhere in India Separation has been as strongly opposed by the Hindu minority in Sind who, though they only form about 27 per cent of the population, are economically powerful and under the present provincial franchise actually form a majority of 25 the voters It is impossible not to sympathise with the desire of the Hindu community in Sind to remain under the rule of the richer Bombay Government, which is also likely to share their communal sympathies Nevertheless, it seems to us that, apart from other considerations, the communal difficulties that would arise from

30 attempting to administer Sind from Bombay would be no less great than those which may face a separate Sind administration It is proposed that the Hindus shall be allotted a considerable proportion of the seats in the Legislature, and they will of course enjoy the protection of the special safeguards for minorities which

35 will apply to the minorities in other Provinces, and it may be noted that a Sindi Muhammadan witness who appeared before us recognized that the Hindus must play an important part in the government of the Province 1 We have reached the conclusion that Sind ought to become a separate Governor's Province

40 view of the very special importance to the Province of the continued success of the Barrage project and of the very large financial issues involved, which will concern the Federal Government as well as the Province of Sind, it is proposed that the Governor of Sind should have a special responsibility for the administration of the 45 Barrage a This seems to us an essential provision and is one to

which we understand that little or no objection has been taken

<sup>1</sup> Vinutes of Evidence Q—A 496 <sup>2</sup> White Paper Proposal 70

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58 The Statutory Commission describe the union which now Onesa. exists between Orissa and Bihar as "a glaring example of the artificial connection of areas which are not naturally related",1 and the demand of the Ooriyas for separation has been long and insistent 5 The main difficulty here is a financial one, since Orissa is now and may well remain a deficit area A separate Province of Orissa would

however be perhaps the most homogeneous province in the whole of British India, both racially and linguistically, the communal difficulty is practically non-existent, and its claim appears to have the sympathy and support of all parties in India. The financial 10 effect of the creation of the proposed new Province upon the finances of the Federation is discussed elsewhere, and we are satisfied that no difficulties of a financial kind beyond those which already exist are likely to be caused thereby. In these circumstances we recommend that a new Province of Orissa be constituted.

The Central Provinces and the Berars,

59 We may here mention the situation which exists in the Central Provinces in connection with the territory known as the Berars This territory forms part of the dominions of His Exalted Highness the Nizam of Hyderabad, but has since 1853 been under British administration and in 1902 was made the subject of a perpetual 20 lease granted by His Exalted Highness It is administered with, but not as part of, the Central Provinces The inhabitants elect a certain number of representatives, who are then formally nominated as members of the Central Provinces Legislature, and legislation both of that Legislature and of the Central Legislature is applied to 25 the Berars through the machinery of the Foreign Jurisdiction Act It has been announced that an arrangement has now been made between the Government of India and His Exalted Highness, whereby, without derogation from His Evalted Highness's sovereignty, the Berars shall be administered as part of a new 30 Province to be known as the Central Provinces and the Berars, that is to say, if and when Provincial Autonomy is established under the new Constitution We have learned with great satisfaction of this arrangement, which will obviate the difficulties which might otherwise bave arisen if the setting up of respon- 35 suble government in the Central Provinces had necessitated a severance between two areas which have so long been in substance, if not in form, under a single administration, and we think that the successful working of Provincial Autonomy in the Central Provinces will owe much to His Exalted Highness's wise and far-seeing action 40

Provincial boundaries 60 The White Paper proposes that the present Governors' Provinces shall retain the boundaries which exist at the present time, with such alterations as the establishment of Sind and Orissa may involve. In the case of Sind, the new Province is to comprise the whole area at present under the jurisdiction of the Commissioner in 45

<sup>1</sup> Report Vol II, para 38 <sup>2</sup> White Paper, Proposal 61

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Sind, and it is suggested that the boundaries of Orissa shall be those recommended by a Committee which inquired into the subject in 1932, with certain modifications considered desirable by the Government of India. We understand that in the case of Orissa the boundaries proposed have given rise to local controversy, but the question involves administrative considerations on which we are not competent to express an opinion, and in our judgment it must be left to the Government of India and His Majesty's Government to determine. The White Paper does not refer to the possibility of a future revision or adjustment of provincial boundaries but provision 10 will have to be made in the Constitution Act for this purpose; and we are clear that it should be a function of the Central Legislature and Government, though the initiative must come from the Provinces concerned.

61. It is possible that in the future it may be found desirable to Constitution constitute new Governors' Provinces, either by a sub-division or an amalgamation of existing areas. We think that the power to create Provinces. a new Governor's Province should be reserved to the Crown and to Parliament, but that it should only be exercised on an address from 20 the Central Legislature, and, where an existing Governor's Province is affected, at the request of that Province.

## (2) THE PROVINCIAL EXECUTIVE

62. We come now to the proposals of the White Paper on the subject of the Provincial Executive, and it will be convenient in 25 this part of our Report to consider two general questions, first, the Provincial Executive as such, and second, its relation to the Provincial Legislature.

The Provincial Executive,

63 The Statutory Commission in the first part of their Report The present Executive. describe the Provincial Executive as it at present exists, and it is 30 unrecessary for us to repeat in detail what they have already said. In hrief, the "provincial subjects" with which the Provincial Executive is now concerned are sub-divided into "transferred subjects" and "reserved subjects" The first group are administered by the Governor acting with Ministers, the second by the Governor 35 in Council. The Members of the Governor's Council, who may not exceed four and of whom by an invariable rule at least half are Indians, are appointed by His Majesty and one at least must have been for not less than twelve years in the service of the Crown in India: the Ministers are appointed by the Governor. 40 The Governor presides at meetings of his Executive Council, where ordinarily the decision of the majority prevails, though the Governor has in case of equality of votes a casting vote and in certain circumstances a right to over-rule his Councillors.

1 Report, Vol. I, paras. 156-161.

The Ministers are chosen by the Governor from the elected 45 members of the Provincial Legislative Council and are not

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members of the Executive Council, though in many Provinces both Executive Councillors and Ministers meet regularly under the presidency of the Governor for the purpose of discussing matters of common interest; in Madras, for example, we understand that it 5 has been always the practice to regard Councillors and Ministers as forming as it were a single body, hy which all questions of policy are discussed, though the responsibility for actual decisions upon them rests upon the Governor in Council or on the Governor advised by his Ministers, as the case may he, according to the nature 10 of the subject. The Governor is required to he "guided by" the advice of his Ministers in relation to transferred subjects, unless he sees sufficient cause to dissent, in which case he may require action to be taken otherwise than in accordance with that advice. Ministers hold office at the Governor's pleasure, but the financial powers of 15 the Legislature give the latter the means of influencing ministerial policy. The members of Council, though ex-officio members of the Legislature, are independent of it and in practice are appointed for a fixed term of five years.

64. The White Paper proposes to do away with this dyarchical Executive power 20 system. It vests the whole executive power and authority of the of authority to be vested in Province in the Governor himself, as the representative of the Governor. King, and it provides the Governor with a Council of Ministers to "aid and advise" him in all matters, except such matters as will

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be left by the Constitution to the Governor's discretion 1 The proposal, therefore, is to give Ministers, who (according to the White 25 Paper) may not be officials and will be members of a Legislature to which they will look for support, the constitutional right to advise the Governor over practically the whole of the provincial sphere It will be observed that Provincial Autonomy does not necessarily imply a system of government of this 30 kind, and the two should not be confused, but, for the reasons which we have given earlier in this Report, we think that the time has now come for enabling Indians to assume a greater measure of responsibility for the government of the Provinces, and in our opinion (though we reserve for subsequent consideration the 35 details of the scheme) the proposal in the White Paper which we have described above is the correct constitutional method of bringing about that result It is according to precedent, and it is based upon English constitutional theory and practice

Analogy with British constitutional system 65 The adoption of English constitutional forms need not, 40 however, imply, and the White Paper does not contemplate, the establishment in each Province of a system analogous in all respects to that which prevails in the United Kingdom at the present day, nor

<sup>1</sup> White Paper, Proposal 66 There will be in a few Provinces certain "Lucluded Areas" (16, tracts where any advanced form of political organization is unsuited to the primitive character of the inhabitants). These will be administered by the Governor himself and Ministers will have no constitutional right to advise him in connexion with them

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is there any inconsistency in this, as some have supposed. A brief examination of the manner in which from time to time those forms have been adapted in practice to the needs of other communities in allegiance to the Crown will sufficiently make this clear.

British constitutional theory

66 In English theory all executive power (with certain exceptions 5 not here relevant) is to-day, as it has been from the earliest times, vested in the Monarch The limits of this power are determined in part by common law and in part by statute, but within those limits the manner of its exercise is not subject to any legal fetter, save in so far as a statute may specify formalities for the doing 10 of a particular executive act But at all times in English history the Monarch has had counsellors to aid and advise him in the exercise of his power, and their status and functions at different periods mark the successive stages of constitutional development. The great nobles, who had claimed a prescriptive right to be con- 15 sulted and who were often powerful enough to subject to their will a weak or reluctant King, gave place, as the complexity of government increased, to a more permanent Council, whose members were the King's servants, selected by him from nobles and commoners alike, whom he consulted or not as he pleased, and who 20 became the instruments of his own policy. The growing influence of the House of Commons at a later date made it necessary for the King always to number among his advisers persons who were members of that body, and the last stage was reached when he sought the advice, not of the Council as a whole, but only of those 25 members of it who represented the predominant political party of the day. By the middle of the 19th century, constitutional usage and practice had so far supplemented constitutional law that the powers possessed in legal theory by the Sovereign were almost entirely exercised on the advice of Ministers possessing for the time being 30 the confidence of Parliament

67 This ingenious and convenient adjustment of a legal frame- lis sembility. work to the successive stages of political evolution has given a flexibility to the English Constitution which it would have been 35 impossible to secure by any Act of Parliament or written Declaration To imprison constitutional practice and usage within the four corners of a written document is to run the risk of making it barren for the future. This was foreseen by the framers of those Dominion and Colonial Constitutions which have followed the 40 British model, and, since it by no means followed that the circumstances of a new State were appropriate for the application of the whole body of English doctrine in its most highly developed form, recourse was had to another device, no less flexible, for the purpose of indicating to the Governor-General or Governor how far in the 45 exercise of the executive power be was to regard himself as bound by English precedent and analogy This is the Instrument of Instructions, and, though Dominion and Colonial Constitutions, and especially the former, necessarily embody much that is still

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regulated by usage and custom in the United Kingdom, the Instrument of Instructions long preserved (and in many cases still preserves) a sphere in which constitutional evolution might continue without involving any change in the legal framework of the Constitution 5 itself

68 It has thus been found possible in communities in every state Adeptation to of development which possess constitutions based upon the English of constitutional model, without doing violence to existing forms of government, to development bring them into harmony with the political circumstances of the Constitutional usage and practice is an ever changing body of doctrine and not an immutable body of dogma, nor can it be assumed a priors that usage and practice which may be eminently adapted to the circumstances of the United Kingdom can be applied without any qualification to the circumstances of India 15 would be to assume that the political development in India has reached the same stage as in this country, and we shall not be taken as implying either censure or criticism, if we say that the facts are notoriously otherwise. The picture presented by India is that of a country with a population so far from homogeneous and so divided 20 hy racial and religious antagonisms that government by unqualified majority rule is admittedly impossible at the present time, and the proposal of the White Paper that even the Governor's Council of Ministers should be so constituted as to include as far as possible members of important minority communities appears to be firmly 25 supported by the great mass of Indian political opinion

69 The White Paper recognises, rightly as it seems to us, that in Governor's these circumstances the Governor, in whom the executive power of from Ministers' the Province is legally vested, may from time to time have to exercise advice. on his own responsibility powers which elsewhere and under other 30 conditions might be exercised on the advice of Ministers 1 It is permissible to recall the religious and political conflicts which distracted our own country for so many generations before the settle-ment which followed the events of 1688 It is not until after that date that the heginnings of responsible government, as we now know 35 it, are to be found, and for many years the Monarch, even if he sought the advice of Ministers continued to act on his own judgment , in every branch of the administration. Not until the two great parties in the State could trust each other not to abuse the political power which the bazard of the polls might place in the hands of one

of them would it have been possible effectively to secure peace and 40 good government without the presence of some authority able and willing to exercise that power independently of both

The instrument of Instructions.

70 It would be possible to rely entirely upon prerogative instruments for the purpose of adapting English constitutional practice to the conditions which obtain to-day in India Thus the Instrument 45 of Instructions might direct the Governor to be guided generally

1 White Paper Proposals 70 73

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by the advice which he receives from his Ministers, but reserve to him a very wide discretion to act upon his own responsibility when the circumstances seemed so to require, and for this plan many precedents are to be found in the history of Colonial Constitutions Or the Instrument might specify certain particular matters with 5 regard to which the Governor is to exercise his own discretion, whatever the advice of his Ministers might be, and precedents for this are also to be found The White Paper, however, introduces a new method for which, so far as we are aware, no exact precedent is to be found, but which is not hastily to be rejected on that account 10 It proposes that the Constitution Act shall declare that for certain specified purposes the Governor is to have a "special responsibility," I and we understand the intention to be that the Instrument of Instructions shall refer in terms to these special responsibilities and direct the Governor, where in his opinion one 15 of them is involved, to take such action as he thinks that the circumstances may require, even if this means dissenting from the advice tendered to him hy his Ministers, while in other matters he will be guided by that advice

Relations between Governor and Ministers

71 We have already pointed out that in the present Government 20 of India Act there is a provision which requires the Governor to be guided by " the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this 25 subject, it provides that the Governor shall have a Council of Ministers to aid and advise him, but leaves his relations with his Ministers to be determined wholly by the Instrument of Instructions We approve this departure from the provisions of the existing Act, for to impose a statutory obligation on the Governor to be guided 30 by ministerial advice is to convert a constitutional convention into a rule of law, and thus perhaps to bring it, most undesirably, within the cogmizance of the Courts We are also of opinion that to declare in the Act itself that certain special responsibilities are to rest upon the Governor instead of leaving them to he enumerated hereafter in 35 the Instrument of Instructions is a plan which has much to commend it In the first place, it will be an assurance to Indian public opinion that the discretionary power of the Governor to dissent from his Ministers' advice is not intended to be unlimited, and secondly, it will secure to Parhament the right to consider and debate the scope 40 of the Governor's powers, before the Constitution Bill passes finally from their control

Constitutional implications of Governor a 'special responsibilities '

72 We do not understand the declaration of a special responsibility with respect to a particular matter to mean or even to suggest that on every occasion when a question relating to that matter comes\_up 45 for decision, the decision is to be that of the Governor to the exclusion of his Ministers. In no sense does it define a sphere from which the

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action of Ministers is excluded. In our view, it does no more than indicate a sphere of action in which it will be constitutionally proper for the Governor, after receiving ministerial advice, to signify his dissent from it and even to act in opposition to it, if in his own 5 unfettered judgment he is of opinion that the circumstances of the case so require. Nor do we anticipate that the occasions on which a Governor will find it necessary so to dissent or to act in opposition to the advice given to him are in normal circumstances likely to be numerous; and certainly they will not be, as some appear to think, 10 of daily occurrence. We leave for later consideration the list of the special responsibilities themselves and the manner in which they are defined; but, if we have rightly appreciated their place in the Constitution, it appears to us unnecessary to seek to define them with meticulous accuracy, though we readily admit that their general

15 scope and purpose should be set out with sufficient precision. 73 The White Paper proposes a novel procedure in connexion with Pullament the Instrument of Instructions, viz., that an opportunity shall be instrument of given to Parliament of expressing an opinion upon it before it is Instructions. finally issued by the Crown.1 There is, we think, ample justification 20 for this proposal, which has been rightly extended not only to the original Instrument but also to any subsequent amendments of it; and we are satisfied that in no other way can Parliament so effectively exercise an influence upon Indian constitutional development. It is essential that the vital importance of the Instrument of Instructions 25 in the evolution of the new Indian Constitution should be fully appreciated. Thus, Ministers would have no constitutional right under the Act to tender advice upon a matter declared by the Act to be within the Governor's own discretion; but the Governor could in any event, and doubtless often would, consult them before his 30 own decision was made; and if at some future time it seemed that this power of consultation might with safety be made mandatory and not permissive, we can see nothing inconsistent with the Act in an amendment of the Instrument of Instructions for such a purpose. But so grave are the issues involved in the Indian constitutional 35 problem that it would be neither wise nor safe in the case of India to deny Parliament a voice in the determination of the progressive stages of that evolution. The mitiative in proposing any change in the Instrument must necessarily rest with the Crown's advisers, that is to say, with the government of the day; but the consequences 40 of any action taken may be so far reaching and so difficult to foresee that Parliament, if denied a prior right of intervention, may find itself compromised in the discharge of the responsibilities which it has assumed towards India, and yet powerless to do anything save to protect. For this reason we are clearly of opinion that, as the 45 White Paper proposes, it is with Parliament that the final word should rest.

White Paper, Proposal 64.

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74. We have now considered the nature of the Provincial Executive Special questions in broad outline; but five questions of capital importance which the Executive. arise in connexion with the subject remain to be examined. These are: (i) The nature of the Governor's special responsibilities; 5 (ii) the Governor's selection of Ministers; (iii) the field in which Ministers are to be entitled to advise the Governor; (1v) the airangements whereby the Governor will secure that his information with

regard to the current affairs of the Province is adequate to enable him to discharge his special responsibilities; (v) the special and additional powers, if any, which the Governor ought to possess

10

The Governor's
" special
responsibilities "
defined

(1) Nature of the Governor's Special Responsibilities

75. It is proposed in the White Paper that the Governor shall have a special responsibility in respect of—

(a) the prevention of any grave menace to the peace or tranquility of the Province, or any part thereof, (b) the safeguarding of the 15 legitimate interests of minorities, (c) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests, (d) the prevention of commercial discrimination, (e) the protection of the rights of any Indian State, (f) the administration of areas 20 declared, in accordance with provisions in that behalf, to be partially excluded areas, (g) securing the execution of orders lawfully issued by the Governor-General 1

The Governors of the North West Frontier Province and of the proposed new Province of Sind are respectively declared to have 25 in addition a special responsibility in respect of—

(h) any matter affecting the Governor's responsibilities as Agent of the Governor-General in the Tribal and the Trans-Border Areas, and (s) the administration of the Sukkur Barrage.

Peace and tranquility of the Province, Minorities, Public Services 76. With regard to (a), the Jomt Memorandum of the British-India 30 Delegation urges a double limitation on the scope of this special responsibility, the first, that the special responsibility itself should be restricted to cases in which the menace arises from subversive movements or activities tending to crimes of violence, and secondly, that any action taken by the Governor under it should be confined 35 to the Department of Law and Order. We cannot accept these suggestions. Terrorist, subversive movements, and crimes of violence, are no doubt among the graver menaces to the peace or tranquillity of a Province, but they do not by any means exhaust the cases in which such a menace may occur, and we can see no logical 40 reason for the distinction which the Joint Memorandum seeks to draw. Still less can we see any justification for restricting the Governor's action to the department of law and order, by which

<sup>2</sup> White Paper, Proposal 70

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we suppose is meant the Police Department There are many other branches of administration in which ill-advised measures may give rise to a menace to the peace or tranquillity of the Province, and we can readily conceive circumstances in connection with land revenue or public health, to mention no others, which might well 5 have this effect With regard to (b), the Joint Memorandum suggests that the phrase "legitimate interests" should be more clearly defined, and that it should be made clear that the minorities referred to are the racial and religious minorities generally included by usage in that expression We doubt if it would be possible to define 10 "legitimate interests" any more precisely The obvious intention is to secure some means by which minorities can be reasonably assured of fair treatment at the hands of majorities, and "legitimate interests" seems to us a very suitable and reasonable formula. Nor do we think that any good purpose would be served by attempting to give a legal 15 definition of "minorities," the only effect of which would be to limit the protection which the Governor's special responsibility is intended to afford. No doubt it will be the five or six well recognised and

more important minorities in whose interests the Governor's powers 20 will usually be invoked, but there are certainly other well-defined sections of the population who may from time to time require protection, and we can see no justification for defining the expression for the purpose of excluding them We need hardly say that we have not in mind a minority in the political or parliamentary sense, and 25 no reasonable person would, we think, ever so construe the word. With regard to (c), the Joint Memorandum proposes that bere also the expression "legitimate interests" should be clearly defined, and that the Governor's special responsibilities should be restricted to the rights and privileges guaranteed by the Constitution 30 assume that the intention of the White Paper is to guarantee to public servants not only their legal rights but also equitable treatment, a thing not susceptible in our opinion of legal definition The anthors of the Joint Memorandum would no doubt say that Ministers can be trusted to act in these matters in a reasonable way, 35 and we do not doubt that this is so, but we think that they should also assume that neither will Provincial Governors act unreasonably in discharging the special responsibilities which the Constitution Act will impose upon them If Ministers in fact act reasonably, as no doubt they will, the occasions on which a Governor will find it 40 necessary to dissent from the advice which they tender to him may never in practice arise.

77 We discuss elsewhere (d) 2 c, the prevention of commercial Rights of States discrimination. With regard to (c), the "rights" here referred to Excluded Areas must necessarily mean rights enjoyed by a State in matters not 45 covered by its Instrument of Accession, which may be prejudiced by administrative or legislative action in a neighbouring Province The duty, as we understand it, is laid on the Governor to secure

#### 1 See safes para 152

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that the balance is held evenly between Province and State, and clearly in a matter of this kind he will be guided by the advice or directions of the Governor General With regard to (f), the responsibility for the government of partially excluded (as opposed 5 to wholly excluded) areas will primarily rest upon Ministers, but we agree that, in view of the responsibility which Parliament has assumed towards the inhabitants of the backward and less civilised tracts in India, it is right to impose a special responsibility in this respect upon the Governor

78 With regard to (g), it is clear that this must be a special Execution of responsibility of the Governor The Governor-General exercises a wide range of powers in responsibility to the Secretary of State and through him to Parliament The exercise of some of these powers may from time to time require the co-operation of provincial administrations, 15 and a Governor must be in a position to give effect to any directions or orders of the Governor-General designed to secure this object, even if their execution may not be acceptable to his own Ministers We refer elsewhere to the case where a difference of opinion has occurred between Federal and Provincial Ministers in the ministerial 20 sphere, arising out of directions given by the former which the latter

are unwilling to obey I

79 With regard to (h), it is apparent that the close connection special between the Governor-General's exclusive responsibility for Defence and External Affairs and the administration of the Tribal and other Frontier 25 Trans-border Areas which march with the administered districts of the North-West Frontier Province makes a provision of this kind

of North West

necessary. With regard to (i), we agree that this special responsibility is necessary in the case of Sind, in view of the vital influence upon the future finances of the Province of the successful operation of the Sukkur irrigation scheme and of the large financial interest 30 which the Central Government has in it.

(ii) The Governor's Selection of Ministers .

Qualifications proposed for Ministers. 80. The White Paper proposes that the Instrument of Instructions shall direct the Governor to select his Ministers in consultation with the person who in his judgment is likely to command the largest 35 following in the legislatures, and to appoint those persons, including so far as possible members of important minority communities, who will best be in a position collectively to command the confidence of the Legislature. It is also proposed that Ministers must be, or become within a stated period (by which we understand a period of 40 six or twelve months to be intended) members of the Legislature.

<sup>1</sup> Infra, paras. 220–221. <sup>2</sup> White Paper, Proposal 68.

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Ministerial responsibility and representation of communities. 81. The question how a direction to the Governor to include among his Ministers, so far as possible, members of important minority communities is to be reconciled with ministerial responsibility, in the accepted sense of that expression, to a Legislature which is itself based on a system of communal representation and in which the numbers of the representatives of the different communities are fixed by statute and unalterable, will be more conveniently discussed later when we examine the more general question of the relation of the Provincial Executive to the Provincial Legislature. We accordingly confine ourselves here to a consideration of the proposal in the White Paper that every Minister shall be, or become within a stated period, a member of the Legislature.

Difficulties of proposal that Ministers should be elected Members of Legislature.

82. Indian opinion appears to attach great importance to this qualification as securing in the most effective manner control by 15 the Legislature over the Executive. It is unknown to the constitutional law of the United Kingdom; but it has long been the rule in this country that a Minister must either find a seat within a reasonable time or resign his appointment, unless the Prime Minister should see fit to recommend him for a peerage; so that the quali- 20 fication exists in practice, if not in law, though during the War there were instances of Ministers who had a seat in neither House. On the other hand we were impressed by the argument that at least in some Provinces the Governor might find it difficult to constitute an efficient Ministry from the members of a small and 25 inexperienced Legislature; and it is no doubt true that in India owing to the very small proportion which the educated classes bear to the total population, there is no certainty that in the smaller Provinces the Legislatures will always contain men fit or experienced enough to assume the heavy responsibilities which Provincial 30 Autonomy under the new order must necessarily involve. It was, therefore, suggested to us that the Governor ought not to be thus restricted in his choice, and that he ought to be in a position, if the need should arise, to select a Minister or Ministers from persons otherwise qualified for appointment but to whom the doubtful 35 pleasures of electioneering might make no appeal.

Suggested methods for meeting difficulty. 83. In the Provinces with a bicameral Legislature, in which a nominated element will find a place, the difficulty is unlikely to arise, if it were understood, or perhaps provided in the Act itself, that these nominations were reserved to the Governor's discretion

40 The real difficulty arises in the unicameral Legislatures, most of which are likely to be found in the smaller and poorer Provinces Various suggestions were made to us (1) that the Governor should be empowered, if he thought fit, to appoint a Minister from outside the Legislature, the Minister so appointed having 45 precisely the same status as other Ministers and sharing their policy and political fortunes, with the right to take part in all proceedings of

2 Infra, paras 108-113

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the Legislature, though not entitled to vote; (2) that in addition to the elected members, there should be one or two members nominated by the Governor, who would be eligible for appointment as Ministers, though not necessarily so appointed, (3) that the Governor should be 5 empowered, if he desired to have an outside Minister, to nominate the person whom he selected as a member ad hoc of the Legislature, and (4) that the Ministers themselves should be empowered, if so requested by the Governor, to co-opt someone from outside and present him to the Governor for appointment Of these suggestions, we un-10 hesitatingly prefer the first. We can see no advantage, and many disadvantages, in the second and third, both of which appear to us to have an air of unreality about them, and we reject the fourth as infringing the Governor's prerogative

84 We have come to the conclusion after giving our best Governor's shoice should 15 consideration to the matter, that it would be wise in the circum-not be fettered stances not to limit the Governor's choice of Ministers in the manner proposed by the White Paper, and that the first of the above suggestions should be adopted The fear that the control of the Legislature over Ministers would be thereby weakened is, in our 20 opinion, greatly exaggerated, in France, for example, where instances of Ministers appointed from outside the two Chambers are hy no means unknown, there seems to be no evidence of any weakening of Parliamentary control over the Governments of which they were members We cannot suppose for a moment that a 25 Governor would employ a power of this kind for the purpose of appointing a whole Ministry from outside the Legislature, but, if this is thought to be a danger to be guarded against, the matter can be dealt with by appropriate directions in the Instrument of Instructions The Indian delegates, we think, saw in the unrestricted 30 choice of Ministers a means of re introducing an official bloc and it is true that one of the proposals in the White Paper is that the holding of any office under the Crown other than that of Minister shall disqualify for membership of a Provincial Legislature, so that no official could become a Minister, if membership of the 35 Legislature is a necessary qualification for Ministerial appointments In our view an official bloc is more correctly defined as a body of members of the Legislature who vote in accordance with official instructions, but who are not themselves Ministers or members of the Government The presence in the 40 Council of Ministers of a Minister who is chosen from outside the Legislature, even supposing him to be an official (which we do not suggest), could not in any way restrict or diminish the control of the Legislature over Ministers, a Minister so chosen will not be less responsible to the Legislature than any of his colleagues, and '45 he will have to defend his actions against criticisms in the Legislature itself. We see, therefore, nothing inconsistent with constitutional principle in what we now propose, and we are of

opinion that it will often be found to add an element of strength

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to the Provincial Executive We need, however, scarcely say that a Governor would be very unwise to appoint a Minister in this way unless he had satisfied himself that the other Ministers were willing to accept him as a colleague.

# (111) The Sphere of Action of Ministers

Law and order.

85 The White Paper, as we have already stated, proposes that Ministers shall advise the Governor in all matters other than the administration of Excluded Areas and matters left by law to the Governor's own discretion. With regard to the first of these two exceptions, we approve the conclusions, and are content to adopt 10 the arguments, of the Statutory Commission, and with regard to the second, such matters must ex hypothesis he left to the Governor's sole decision, though he may, and no doubt often will, consult Ministers upon them. With regard to other matters which fall within the provincial sphere, the only question, but one of first rate 15 importance, on which there is any substantial dispute, is whether the administration of the subjects known compendiously as "law and order" should be retained in the Governor's hands.

Arguments for and against transfer

86 This question is one on which strong views are held on both sides On the one hand, it is urged that the grant of responsible 20 government to an autonomous Province would be a mockery, if the administration of law and order were withheld. On the other, it is objected that the maintenance of law and order is in India so vital a function of the Executive that it would be incorring too great a risk to transfer it to Indian Ministers, until they had proved 25 their capacity in other and less dangerous fields, that the morale of the police would be imperilled by political pressure upon Ministers, which they might not have the strength or courage to resist, and that the impartiality of the force in the event of communal disturbances might become suspect It would be idle to deny the force 30 of these arguments, especially when it is remembered that the public order and security of a Province depends not more on the executive action of the police than on the efficient performance of his administrative, as distinguished from judicial, functions by the district magistrate, who would under the proposals in the White Paper 35 equally be subject to the control of a Minister Nevertheless, after an anxious consideration of all the circumstances, we do not see our way to differ from the conclusion reached, not without hesitation, by the Statutory Commission.

Control of law and order an essential attribute of responsible government

87 We find ourselves unable to conceive a government to 40 which the quality of responsibility could be attributed if it were probabited from exercising the first and most fundamental of all functions of government, that of the prescription of order. In no other sphere has the word "responsibility" so profound and

White Paper, Proposal 70 (a)

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significant a meaning, and we doubt whether Ministers who are denied the opportunity of learning responsibility in this sphere are ever likely to become proficient in the other arts of government From one point of view indeed the transfer of these functions to an Indian Minister may be in the interest of the police themselves, whom it will no longer be possible to attack, as they have been attacked in the past, as agents of oppression acting on behalf of an alien power; but we prefer to base our conclusion

upon the broader grounds indicated above. Nevertheless, it must 10 not be supposed that we are hind to the risks implicit in the course which we advocate; for these, in our opinion, cannot he regarded lightly or as the phantoms of a reactionary imagination. The qualities most essential in a police force, discipline, impartiality, and confidence in its officers, are precisely those which would be 15 most quickly undermined by any suspicion of political influence or pressure exercised from above; and it would indeed be disastrous if in any Province the police force, to whose constancy and discipline in most difficult circumstances India owes a debt not easily to be repaid, were to be sacrificed to the exigencies of a party or to appease 20 the political supporters of a Minister. If, however, Indian Ministers are to he given an opportunity of showing the stuff of which they are made, as we think they must, these are risks which must be run. Nothing will afford a more conclusive test of the fitness of Indians to govern themselves than their handling of this particular problem; 25 and by their success or failure public opinion both in this country and in India will judge them.

88. There are, however, other proposals in the White Paper which The Governor's have a very important hearing upon this question. In the first responsibility, place, it will be remembered that one of the matters in respect 30 of which the Governor is declared to have a special responsibility is "the prevention of any grave menace to the peace or tranquillity of the province or any part thereof." If, therefore, the Governor should he of opinion that the administration of law and order is, through the action or inaction of Ministers, jeopardizing the peace 35 or tranquility of the province, it will be open to him to take such action as he may think fit to meet the situation. This does not, of course, imply interference in the routine administration of the police force; so to interfere would obviously diminish the sense of responsibility in Ministers and would not he in the 40 interest of the police force itself. But if, by reason of ill-timed measures of economy or of the exertion of political or other improper influence upon the force, the preservation of order were endangered, then, in our opinion, the intervention of the Governor under his special responsibility would be justified. We are not to be taken 45 as assuming that such a state of things must necessarily arise; we only point out that, if it should, the White Paper does not leave the Governor without a remedy. Secondly, another special

1 White Paper, Proposal 70 (c).

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responsibility of the Governor is "the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests." These are important safeguards, and should go far to qualify 5 the fears of those who are apprehensive lest the high quality and standards of the present police forces will suffer with their transfer to the control of Indian Ministers.

89. The importance in this connection of the hody of regulations The Police known as the Police Rules was brought to our notice. The adminis-10 tration of the police is largely governed by these rules, which are promulgated from time to time under powers given to various Police Acts; and it was suggested to us that provision ought to he made giving the Governor a discretionary power to assent to, or dissent from, any proposed alteration in the rules. We do not doubt that the 15 efficiency, and perhaps the discipline, of a police force might he

affected by amendments of a particular kind, but to give so extensive a power to the Governor seems to us neither necessary nor In the first place, we understand that a large number of the rules deal with fourtine matters of quite minor importance, and are constantly amended in effect on the responsibility of the Inspec- 20 tor General of Police himself, and it would clearly be absurd if every amendment of this kind required the Governor's concurrence. On the other hand, it may well be that the subject matter of some of the rules is so vital to the well-being of the police force that they ought not to be amended without at least the Governor's knowledge 25 We have not been able in the time at our disposal to make a minute study of the rules, but if His Majesty's Government, after a further examination of the subject, came to the conclusion that certain rules were properly included in a category of this kind and made special provision with regard to them, and possibly also with regard to the 30 Police Acts themselves, in the legislative proposals which they will submit to Parliament, we should be prepared to agree, nor can we see why a sateguard of this kind need operate in any way to diminish the responsibility for the administration of law and order, which, as we have already said, we think should in future rest upon 35 Indian Ministers themselves

The Special Branch 90 There is one other matter which arises in connection with the police and to which we think it convenient to draw attention in this place. It has been represented to us very forcibly that, whatever may be the decision with regard to the transfer of law and order 40 generally, special provision ought to be made with regard to that branch of the police which is concerned with the suppression of terrorism. We do not here refer to those members of the police who are occupied in combating terrorism as part of their regular functions in the prevention of crime and maintenance of order, but to that which is sometimes known as the Special Branch, a body of carefully selected officers who devote themselves to the collection and sifting of information on which their comrades in the force can subsequently

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take action. Their work necessarily involves the employment of confidential agents and others from whom the information is obtained, and it is stated to us, and we see no reason to doubt the fact, that the supply of information derived from these sources would at once cease, if the identity of those who furnished it became known, or 5 might become known outside the police force itself. This being so, it has been urged that the operations of the Special Branch ought to be placed under the exclusive control of the Governor, since otherwise the organisation which at present exists, and which is an essential instrument in the fight against terrorism, would be disrupted and 10 would be difficult, and perhaps impossible, to reconstitute

Secret intelligence reports. 91 The problem is a difficult one, though at the moment it is only of immediate importance in the Province of Bengal The Special Branch is an integral part of the police force and is in no sense independent of the provincial Inspector General 15 of Police. It is exclusively concerned with the collection and sifting of information, and any executive action which may follow from its investigations is undertaken by the ordinary police force. But if it is impossible to distinguish between the two, then (it is said) an Indian Minister, who may have to defend sub 20 sequently before the Legislature an arrest or prosecution made or begun by his orders, must have the right to satisfy himself that the information is trustworthy on which he is invited to act, and the

names of the agents from whom it has been obtained could not in the 25 last resort be withheld from him. We think that those who argue thus are not acquainted with the general practice in matters of this We are informed by those who have experience in such matters in this country that in a secret service case the names of agents are in no circumstances disclosed to Ministers, and that 30 (for reasons which we fully appreciate) a case has never been known in which a Minister has even asked for the information We think that Indian Ministers, if and when they take over the administration of law and order, would be wise themselves to adopt so salutary a convention but we are satisfied that the difficulty 35 arises, not because Indian Ministers are likely to disclose the names of agents or even to demand them, but because the agents have an meradicable suspicion that the information will in fact become known So long as this suspicion or belief exists, the consequences arc the same, whether it is ill-founded or not

92 We do not think it desirable that the Constitution Act should Powers of vest in the Governor himself the control of the Special Branch. On the other hand we can conceive a state of things arising in which the discharge of the special responsibility to which we have referred above might make it necessary for him to direct the 45 Inspector-General of Police in the Province in no circumstances to disclose the source of any information which may be obtained by the Special Branch to any person whatsoever without the Governor's prior approval It might even be thought advisable to refer to this

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possibility in his Instrument of Instructions But the necessity

for action of this kind could scarcely arise, unless the efforts of the police in the suppression of terrorism had not the sympathy, or at least failed to gain the support, of Ministers, a possibility which we hope that we may regard as remote, and in that case it would in our opinion be preferable to empower the Governor, with the consent of the Governor-General, to take over and administer himself the whole anti-terrorist organisation until such time as he and the Governor-General are satisfied, perhaps after a change of Ministry, that it can be safely entrusted once more to those whose constitu-10 tional duty it is to see that the law is properly enforced. This would, we think involve the appointment of some person selected by the Governor at his discretion to act as his spokesman for the time being in the Legislature We might add that it was suggested to us as an alternative proposal that the Special Branches throughout 15 India should in future be under the control of the Governor-General, since there is at the present time an Intelligence Service under the control of the Central Government which necessarily works in close contact with all the provincial police forces This, however, would involve the creation of a new reserved service under the 20 control of the Governor-General, a course which we should deprecate. In our opinion it would be a more convenient arrangement if in future the intelligence work at the Centre in its internal security aspect were assigned to the Department of Defence as part of the latter's normal functions The central intelligence service would 25 in that case continue to act as a clearing house for information generally, and the local police would be able, and no doubt anxious, to avail themselves of its services, but to impose on the Governor-General any statutory functions in relation to the police administration of a Province seems to us a plan which has nothing to 30 commend it

# (1v) The Governor and the Provincial Administration

Relations between Governor and provincial administration 93 The question has been raised whether the Governor under a provincial Constitution such as is now proposed will have at his disposal sufficient information as to the current affairs of the Province to enable him to take timely action in a case where the due discharge 35 of any of his special responsibilities seems to call for his intervention. This is a vital issue, for the special powers of the Governor would be entirely nugatory if, by reason of his divorce from current administrative business, the circumstances which might require the exercise of those powers were brought too late to his notice. In our opinion, 40 however, the proposals in the White Paper, if fully carried into effect, are adequate for the Governor's protection in this respect.

Importance of the office of Governor, 94 The Governor's office is at the present time one of great prestige and anthority Of a large part of the Provincial Administration he is not only the titular but the actual head, and in the 45 administration of the "transferred subjects" also, where he is even now guided by the advice of Ministers, he is able to exercise an influence, both legitimate and constitutional, to an extent for

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which it would probably be difficult to find analogies in the more politically developed States of Europe and America He presides at meetings of his Ministers, and they are accustomed to look to him for assistance and support, and we see no reason why for many years to come a Council of Ministers, advising over the whole field, 5 and not only over a part, of the provincial administration, should be anxious to deprive themselves of the assistance which a Governor of ripe experience will be able to give them, or regard themselves as representatives of an opposing interest. On the other hand, it has been pointed out to us that much of the information of the Governor 10 with regard to current affairs is derived from his intercourse with the Secretaries to Government, almost always members of the Civil Service, who hy a practice of long standing enjoy the right of regular access to him for the purpose of discussing cases which in their view ment his personal attention, and obviously the Governor as the head 15 of the provincial Executive will have the unquestionable right to send for and to see any officer of his Government at any time No doubt under a different order such personal communication between a Governor and the Secretaries would not occur without the assent, express or implied, of the Ministers concerned, but 20 we find it difficult to suppose either that that assent would be withheld or that a Minister would not be kept fully acquainted by the Secretary in charge of the Minister's department with any discussion which had taken place between himself and the Governor Nevertheless, we recognise that, not only for the 25 avoidance of error or misunderstanding, but also as a protection to the Governor in cases where his relations with Ministers may not be always barmonions, it is well to put certain specific powers in the Governor's hands.

Rules of Executive business 95 The White Paper authorises the Governor, after consultation 30 with his Ministers, to make, at his discretion, any rules which he regards as requisite to regulate the disposal of Government business and the procedure to be observed in its conduct, and for the transmission to himself of all such information as he may direct. We understand that both the distribution and conduct of public business 35 have in India long been regulated almost entirely by rules of this kind, and there is therefore nothing strange or novel in the proposal The Governor's rules under the new Constitution will no doubt

require to be framed on rather different lines, and, if they are 40 modified in some directions, to be expanded in others; but we see no ground for supposing that the rule making power cannot be adapted to meet all the reasonable requirements of the case. It would, for example, be competent for the Governor to prescribe by rule that orders on certain specified matters are not to he 45 passed unless the decision on them has been initialled by himself. This would ensure that all matters in that particular sphere were at least brought to his attention before action was

<sup>1</sup> White Paper, Proposal 69.

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taken upon them. We are not suggesting that the decision taken would on that account be the Governor's alone, without, or contrary to, the advice of his Ministers. Unless his special responsibilities were involved, his decision would be guided by their advice; but 5 that advice would be given after discussion, and the Governor would be in a position, if he had views of his own on the matter, to invite Ministers to weigh and consider them before their advice is given. We give the above as an example only, for we do not conceive it our duty, even if we had the necessary special knowledge 10 to make recommendations on all the matters which the rule making power could possibly include. But we think there ought in any case to be a rule laying down with precision the relations between the Governor, his Ministers, and the Secretaries to Government. If it is to be the Council of Ministers who will in future aid and 15 advise the Governor, it is plain that the Governor can no longer be advised directly and independently by the Secretaries to Government; but we should regard it as extremely unfortunate if the latter were deprived of access to the Governor or prevented from submitting to him such papers as in their opinion he ought to see. 20 We do not attempt to lay down the form which rules for this purpose should take; but it is a matter to which we attach considerable importance and it is one to which we desire to draw the special attention of His Majesty's Government.

96. It is essential that the Governor should have at his disposal The Governor's 25 an adequate personal and secretarial staff of his own. This is recognised in the White Paper, where it is proposed (rightly, in our opinion) that the salary and allowances of such a staff are to be fixed by Order in Council, and, though included in the annual proposals for the appropriation of revenue, are not to be submitted 30 to the vote of the Legislature. We think also that there should be at the head of this staff a capable and experienced officer of high standing. Such an officer would be a man fully conversant with the current affairs of the Province and in close contact with the administration; but we do not for a moment contemplate that he 35 should exercise any executive functions himself; still less, as some of the Indian delegates seemed to think, that he should occupy in any sense a position analogous to that of a Deputy-Governor. But so long as a sphere remains in which the Governor is not necessarily guided by the advice of Ministers, we cannot doubt that the 40 Governor will require the assistance which an officer of this kind can give. There is no precise analogy between his position, as we conceive it, and that of any present-day civil servant in Whitehall; and we have no doubt that his duties will vary from time to time as constitutional practice and usage grows. In some respects he will 45 occupy the position at present filled by the Governor's Private

Secretary, but we think it right that he should in future be known by some other designation, and we suggest for consideration that of Secretary to the Governor

<sup>2</sup> White Paper, Proposal 65

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Influence of Governor on working of responsible government

97 It is clear that the successful working of responsible government in the Provinces will be very greatly influenced by the character and experience of the provincial Governors We concur with everything which has been said by the Statntory Commission on the part which the Governors bave played in the working of the 5 reforms of 1919,1 and we do not think that the part which they will play in the future will be any less important or valuable note here, though the matter is not altogether relevant to the subject which we bave been discussing, of a suggestion pressed by some of the British India Delegation that in future Governors should always 10 be appointed from the United Kingdom and indeed that there should be a statutory prohibition against the appointment of persons who are members of the Indian Civil Service We cannot accept this suggestion. We bold strongly the view that His Majesty's selection of Governors ought not to be fettered in any way, and, that there 15 may be no misunderstanding on the point, we desire to state our belief that, in the future no less than in the past, men in every way fitted for appointment as the Governor of a Province will be found among members of the Civil Service who have distinguished themselves elsewhere in India 20

## (v) Special Powers of Governor

Governor's special powers.

98 It is plain that, for the due discharge of his special responsibilities, it may not always suffice for the Governor to be able to dissent from the advice tendered to him by Ministers, in some circumstances it may be essential that further powers should be at 25 his disposal. This is recognised in the White Paper, in which it is proposed to give the Governor certain legislative and financial powers. The powers which it is proposed to entrust to the Governor in the event of the breakdown in the constitutional machinery may also be considered under this head.

Powers'

99 As regards legislative powers, the White Paper proposes to empower the Governor at his discretion, to present, or cause to be presented, a Bill to the Legislature with a Message that it is essential, baving regard to any of his special responsibilities, that the Bill should become law hefore a date specified in the Message, and to 35 declare by Message in respect of any Bill already introduced that it should for similar reasons become law before a stated date in a form specified in the Message. If before the date specified the Bill is not passed, or is not passed in the specified form, as the case may be, the Governor will be empowered at his discretion to enact it as a 40 Governor 8 Act, either with or without any amendments made by the Legislature after receipt of his Message. Under the present Government of India Act, where a provincial Legislature has refused leave to introduce, or has failed to pass in the form recommended by the Governor, any Bill relating to a reserved subject, the Governor may 45

<sup>2</sup> Report Vel I para 165 <sup>6</sup> White Paper, Proposal 92

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certify that the passage of the Bill is essential for the discharge of his responsibility for the subject and thereupon the Bill shall be deemed to have passed and shall, on signature by the Governor,

become an Act of the Legislature. It will be seen, therefore, that 5 one difference between the existing procedure and that which is now proposed is that in the former case a certified Bill is deemed to be an Act of the Legislature, whereas in the latter it is declared to be (what indeed it is) a Governor's Act. So far as this difference in nomenclature is concerned, we concur in the proposal of the White 10 Paper, for we can see no possible advantage in describing an Act as the Act of the Legislature, when the Legislature has expressly declined to enact it. But the members of the British India Delegation desired to go further, and, though they did not dissent from giving the Governor the power in appropriate circumstances 15 to enact legislation, urged that be should do so on his own exclusive responsibility, and that the Legislature ought not to be associated with the process in any way. In their view the proposals in the White Paper tended in the first place to blur the respective responsibilities of Governor and Legislature, and in the second to enable the Governor to seek support in the Logislature against his Ministers and thus to undermine the position of the latter.

100. There is much force in the British India argument, and if Governor's we thought that the intention, or even the effect, of the proposal be exercised were to enable the Covernor to so behind the best for the proposal be exercised. were to enable the Governor to go behind the back of his Ministers independently for the purpose of securing the passage of legislation which they themselves were unwilling to sponsor, we think that the argument would be conclusive. We are not, however, clear that this is necessarily so. We agree that, if a Governor finds it necessary to make use of his special legislative powers, the responsibility for 30 using them must be his alone, and that he ought not to seek to persuade the Legislature to take any part of it upon themselves. On the other hand, though it is no less undesirable that the Governor should, save in most exceptional circumstances, exercise a power which is ordinarily the prerogative of the Legislature, there is much 35 to be said for giving the Legislature up to the eleventh hour an opportunity to reconsider legislative proposals which perhaps they have declined for political or party reasons to consider upon the merits, and for thus enabling a Bill to become law by the regular constitutional process; and it would certainly be unfortunate if a 40 Governor found himself compelled to exercise his special powers, when be might be able to achieve his object in some other way. This we conceive to be the intention underlying the White Paper proposals, and, if so, they ought not lightly to be rejected. They also leave the way open for a compromise between Governor and Legislature, 45 in the event of a difference of opinion between the two; for the Governor may, as the result of further discussion, be willing to

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sacrifice part of a Bill, if he can secure the passage of the remainder, and the Legislature may be willing on their side to pass the Bill,

if those particular parts are omitted.

101. We doubt if a Governor ought ever to present a Bill to the Modification of Legislature which his Ministers have refused to sponsor. If he does so, because be anticipates that he will secure a majority for the Bill, then it must be assumed that his Ministers no longer possess the 5 confidence of the Legislature, and his proper course would be to dismiss them and appoint others in their place. On the other hand, » if Ministers are of opinion that there is a reasonable chance of the Bill passing, because there is a change of attitude in the Legislature or on any other ground, then, as it seems to us, it is for Ministers 10 themselves to sponsor the Bill, if they approve it. The logical

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conclusion would seem to be that a Governor should exercise his legislative powers, when he thinks it necessary so to do, without reference to the Legislature at all, even though his Ministers may hold as strongly as he does that the legislation is necessary; a fortion, where they are opposed to it. But we are impressed with the 15 advantage which would accrue, if an opportunity were given to the Legislature for revising a hasty or unconsidered decision previously made or threatened. We accordingly recommend that the Governor should be empowered to notify the Legislature by Message (if, that is, the Legislature is sitting) that he intends at the expiration of, say, 20 one month to enact a Governor's Act, the terms of which would be set out in the Message. The Legislature would be under no obligation to take any action on the Message; but it would be open to them, if they thought fit, to present an address to the Governor at any time before the expiration of the month, praying him only to enact 25 the proposed Act with certain amendments, which the Governor could consider upon their merits; or the Legislature might even think fit to reverse their former decision and to forestall the Governor by themselves enacting legislation in the sense desired by the Governor. There would, if this recommendation is accepted, be 30 no presentation of a Bill to the Legislature, as proposed by the White Paper, but only a notification of the Governor's intention to exercise his powers; and we do not see how it could then be said that the Governor was seeking to enlist support against his Ministers or trying to induce the Legislature to share a responsibility which 35 belongs to him alone. We observe that the White Paper proposes that whereas temporary Ordinances, if extended beyond six months, are to be laid before Parliament, there is no similar proposal in the case of Governor's Acts. We think that the same rule should apply in both cases.

Ordinances,

102. The next special power which it is proposed to give the Governor is the power (for use in emergencies) of issuing temporary Ordinances, to be valid for not more than six months in the first instance, but renewable once for a similar period. At the present time, this power is only exercisable whether for a single Province 45 or for the whole of British India by the Governor-General; but we cannot doubt that in an autonomous Province it should in future

White Paper, Proposal 103.

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be vested in the Governor himself. It was urged by the British India Delegation that the power should continue to be vested in the Governor-General; and if it should be thought that his concurrence should be obtained, we do not dissent, though we should be content with the proposal in the White Paper as it stands; but in any case it is obvious that no Governor would exercise so unusual and important a power without prior consultation with the Governor-General.

Appropriation of revenues.

103. The White Paper next proposes that the Governor shall be empowered to include in the annual appropriation of revenue 10 authenticated by him any additional amounts which he regards as necessary for the discharge of his special responsibilities, provided that the total amount so authenticated under any head of expenditure does not exceed the amount which was proposed to be appropriated under that head when the financial proposals for the year were first 15 laid before the Legislature; that is to say, the Governor will have power to restore any sums included by him for the above purposes

in the original proposals for appropriation, if the Legislature has subsequently rejected or reduced them 1 We have no comment to 20 make upon this proposal, for it is clearly essential that the Governor should possess powers of this kind, if he is to be in a position at all times to discharge the special responsibilities which it is intended to impose upon him, and we think that the limitation which is suggested on the exercise of the power is a reasonable one

104. It is to he observed that the Governor will only he able to Ordinances avail himself of the special powers, legislative and financial, which ministers advice we have described above, when in his opinion one of his special responsibilities is involved and the due discharge of that responsihility requires the exercise of the power In the case of a Governor's

30 Act or the restoration of a rejected appropriation, we have no doubt that this is a proper restriction to impose. In the case, however, of the Ordinance-making power, the matter does not seem at first sight to he so clear, for an Ordinance assumes the existence of an emergency, and this might arise in connection with any hranch of the adminis-35 tration, whether the Governor's special responsibilities were involved But we notice that the White Paper also proposes that the Governor shall have power to make Ordinances for the good government of the Province at any time when the Legislature is not in

session, if his Ministers are satisfied that an emergency exists which 40 renders such a course necessary 2 Such an Ordinance is to be laid before the Provincial Legislature and will cease to operate at the expiration of six weeks from the date of the reassembly of the Legislature, unless in the meantime the Legislature has disapproved it by resolution There are thus two kinds of Ordinance contemplated,

45 the first made on the Governor's own responsibility and in the

White Paper, Proposal 99 White Paper, Proposal 104

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discharge of his special responsibilities, the second on the advice of Ministers and therefore necessarily in a sphere in which the Governor will be guided by their advice. In these circumstances the whole field appears to be covered and we are satisfied that the Governor's power of making Ordinances on his own responsibility is properly limited to those cases only in which his special responsibilities are involved

105 Lastly, it is proposed to give the Governor power at his Governor's discretion, if at any time he is satisfied that a situation has arisen power in event of breakdown 10 which for the time heing renders it impossible for the government of constitution of the Province to he carried on in accordance with the provisions of the Constitution Act by Proclamation to assume to himself all such powers vested in any provincial authority as appear to him to be necessary for the purpose of securing that the Government of the This Proclamation will 15 Province shall be carried on effectively have the same effect as an Act of Parliament, and will cease to be in force at the expiration of six months unless previously approved by resolutions of both Houses of Parliament, though it may he at any time revoked by similar resolutions 1. Events in 20 more than one Province since the reforms of 1919 have shown that powers of this kind are nnhappily not yet obsolete, and it is too soon to predict that even under responsible government , their existence will never be necessary We do not read the White Paper as meaning that the Governor, in the event of a hreakdown of 25 the Constitutional machinery, is bound to take over the whole government of the Province and administer it himself on his own

undivided responsibility We conceive that the intention is to provide also for the possibility of a partial breakdown and to enable the Governor to take over part only of the machinery of government, leaving the remainder to function according to the ordinary law 30 Thus the Governor might, if the breakdown were in the legislative machinery of the Province alone, still carry on the government with the aid of his Ministers, if they were willing to support him we are speaking of course of such a case as the refusal of the Legislature to function at all, and not merely to lesser conflicts or disputes between 35 it and the Governor If we are right in our interpretation, we approve the proposals, and we are of opinion that it would be unwise, if not impracticable, to specify in any detail the action which the Governor should be authorised to take A constitutional breakdown implies no ordinary crisis and it is impossible to foresee what measures the 40 circumstances might demand. It is right, therefore, that the Governor should be armed with a general discretionary power to adopt such remedies as the case may require.

Responsibility of Governor to Secretary of State and Parliament 106 It is clear that where the Governor is exercising his special powers or is acting in his discretion, he must be constitutionally 45 responsible to some authority, and that responsibility will be in the first instance to the Governor-General and through him to the

<sup>2</sup> White Paper, Proposal 105.

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Secretary of State and ultimately to Parliament This is the effect of the White Paper proposal, and it is unnecessary for us to comment upon it 1

# (3) RELATIONS BETWEEN THE PROVINCIAL EXECUTIVE AND LEGISLATURE

5

Aspects of responsible government of India 107 We have said in an earlier part of this Report that by responsible government we mean a form of government in which the Executive is in some sense accountable to the Legislature, and we have pointed out the undentable fact that, while the Indian demand is for parhamentary government on the British model, the essential 10 conditions of parliamentary government as it is understood in the United Kingdom neither exist in India at the present time nor are likely to come into existence for many years to come. For this reason it seems desirable that we should attempt to examine in greater detail the relations between the Executive and the Legislature 15 under the plan proposed in the White Paper

Composite
Ministries
proposed by
White Paper

108 The White Paper proposes that the Governor shall be directed by his Instrument of Instructions to select his Ministers" in consultation with the person who, in his judgment, is likely to command the largest following in the Legislature" and "to appoint those persons 20 (including so far as possible members of important minority communities) who will best be in a position collectively to command the confidence of the Legislature" Assuming, as we do, that the Legislature will be based on a system of communal representation, it will be seen that this proposal contemplates the formation of a 25 composite Ministry, representative not (as in the United Kingdom) of a single majority party or even of a coalition of parties, but also of minorities as such. We do not suppose that any other plan would commend itself to the minority communities at the present moment, and we must, therefore, accept it as a necessary element in the 30 scheme, but it is not parliamentary government in the British sense.

109 It is our earnest hope that in the future parties may develop Desirability of in India which will cut across communal lines, but we entertain parties on non some doubt whether the proposed directions in the Instrument of communal lines 35 Instructions, if literally obeyed, may not operate to prevent both the growth of parties and the formation of homogeneous Ministries The obligation imposed upon the Governor of including among his Ministers members of important minority communities is no doubt qualified by the words "so far as possible", and much will depend 40 upon the meaning which is to be attached to this qualification. It may be read as meaning that, whenever a member of a minority community is willing to accept office then the Governor is to have no option but to appoint him, and it would be exceedingly unfortunate if a Governor at some future date were thereby prevented from

White Paper, Proposal 72
 White Paper, Proposal 67

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encouraging a healthier development on non-communal lines think, therefore, that the formula proposed in the White Paper ments re-examination with a view to giving greater latitude to the Governor We recognise that nothing ought to be done at the present time which 5 would excite suspicion or distrust in the mind of the minorities and we have no doubt that for many years to come the minorities will expect to be represented in every Ministry, but we should be sorry to think that this is to be an eternal and immutable feature of Indian politics

110 We have emphasised the vital importance in India of the Breezitye not Executive It has seemed to us in the course of our discussions with the British India delegates that in their anxiety to increase the prerogatives of the Legislature, they have been apt to overlook the functions of the Executive, an attitude not perhaps surprising in 15 those to whom at the present time the Legislature offers the main field of political activity. But if the responsibility for government is henceforward to be borne by Indians themselves they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken 20 the sense of responsibility of both The function of the Executive is to govern and to administer, that of the Legislature to vote supply, to criticize, to educate public opinion, and to legislate and great mischief may result from attempts by the latter to invade the executive sphere. The belief that parliamentary government is 25 incompatible with a strong Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world. The United Kingdom affords a sufficient proof that a strong Executive may co-exist even with an omnipotent Parliament if the necessary conditions are present, and

30 the strength of the Executive in this country may, we think, be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that the prerogatives of the Legislature are not to be jealously or factiously asserted in such a way as to prevent the King's Government from 35 being carried on "His Majesty's Opposition 'is not an idle phrase, but emhodies a constitutional doctrine of great significance

nevitable, seems to us unlikely for some time to produce a strong himsters. Executive, since it will not have the support of a disciplined party, 40 and the tradition of which we have spoken is as yet unknown in India It is difficult to avoid the conclusion that its members will

ancompatible perhamentary

tend to regard themselves as responsible to the various communities whom they represent rather than to the Legislature as a whole. The British-India delegates laid indeed great stress upon the collective responsibility of the Provincial Ministries, and in their 45 Joint Memorandum have urged that the Instrument of Instructions should definitely contain a direction to the Governor that the collective responsibility of Ministers is to be introduced forthwith.

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This seems to us to confuse cause and effect, and we confess our inability to understand how collective responsibility could be thus "introduced" by any directions to a Governor. The Governor can, and we hope will, insist that, when his Ministers advise him, they do so with a single voice. The collective responsibility of Ministers to the Legislature is, however, not a rule of law to be put into operation at discretion, but a constitutional convention which only usage and practice can define or enforce, and which depends no less upon the attitude of the Legislature than upon that of Ministers themselves. A wise Governor will seek to encourage political conditions 10 which favour the growth of this convention; but since it is the outcome and not the cause of ministerial solidarity, it is as likely to be hindered as to be helped by artificial devices which take no account of the realities of the situation. It is an element of strength in an Executive, and for that reason we attach great importance to it; 15 but in our judgment its evolution and adoption are matters which must be left to Indians themselves.

Dangers of government by groups,

112. A Ministry such as we have described, with no permanent majority on which to rely and without the bond of a common political faith, may well find it difficult to assert its authority over 20 the Legislature, and here we think that a very real danger lies. Nothing could be more disastrous to India than a system under which the Executive is at the mercy of a number of constantly shifting groups in the Legislature. The account given by the Statutory Commission of the working of the existing provincial 25 Constitution is not very encouraging. "Governors in choosing their Constitution is not very encouraging. Ministers, "they observe, "here that ar exceptionally difficult task It could seldom be predicted what following a Minister would have in the Legislature, quite apart from the fact that his acceptance of office was often followed, owing to personal rivalries, by the detach- 30 ment of some of his previous adherents,"1-a statement amply confirmed by our own information; and it should also be remembered that Ministers will not in future be able to rely upon the official bloc, which, in the words of the Statutory Commission, "has helped to decrease the instability of the balance of existing groups 35 in the Legislature, and has made the tenure of office of Ministers far less precarious," It may be said that these difficulties will disappear under responsible government. We hope that it will be so, and we should not have recommended that the experiment be made, if we were not satisfied that under no other system can Indians learn how 40 to govern themselves. But we are bound to add that in our opinion a sense of corporate responsibility in Legislatures constituted wholly on a communal basis is likely to be of slow growth, and that the education of provincial legislators may sometimes prove an expensive luxury to the Province. We have therefore considered in what way 45 it may be possible to strengthen the Executive and to make its authority more effective.

Report, Vol. I, para 230. Ibid., para 228.

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113 An Executive must necessarily lack authority unless it can Methods for be certain of a reasonable length of tenure, and our attention has see been drawn to more than one device for the purpose of securing this Executive Among these was a suggestion that the Ministry, after its 5 appointment by the Governor, should present itself to the Legislature and demand a vote of confidence, and that when this had been accorded it should remain in office for a fixed period, which might be from one to three years, and should only he removable (unless previously dismissed by the Governor) by a vote of non-confidence 10 passed hy something more than a bare majority of votes this proposal, a Ministry would remain in office, even though the Legislature might refuse supply, and the responsibility for any untoward consequences which might ensue would be upon Legislature alone This plan, attractive at first sight, does not seem to 15 us a workable one A Legislature, determined to withhold support from a new Ministry, might refuse time after time to give the initial vote of confidence, and the result would be a complete deadlock. Secondly, the existence of a Ministry which had not in fact the confidence of the Legislature could in practice he made impossible, 20 whether or not the formal vote of non confidence was passed, for we doubt whether any Ministers would be willing to continue in office, even though they enjoyed a statutory tenure, if they could secure neither supply nor the passage of any part of their legislative There is not in our opinion any effective method of 25 securing by statutory enactment under a system of parliamentary government permanence of tenure to a Ministry faced by a consistently hostile Legislature, and to this we might add that nothing 18 less likely to promote a sense of responsibility in the Legislature than the knowledge that, even if only for a specified and limited 30 period, the Executive is irremovable

stability of the

114 We see, however, no reason why a hostile vote, even on a Use of demand for supply, should always involve the fate of a Ministry, and no doubt in the course of time the matter will come to be to supp regulated by constitutional conventions Much will depend upon 35 the Governor and on the support which he is able to give to the Ministers of his choice It has often been assumed that, when the Governor finds himself compelled to make use of his special powers, the occasion will ordinarily be a difference between himself and his Ministers We think on the contrary that differences are much more 40 likely to occur, where the Legislature acts irresponsibly, between the Legislature on the one hand, and the Ministry, supported by the Governor, on the other, and where this is so, it seems to us that circumstances might well arise in which the use of his special powers by the Governor or an intimation to the Legislature of his intention 45 to use them would contribute to the strength of a Ministry which was willing to co operate with him Ministers would not, of course, be entitled of their own motion to advise the Governor to make use of his special powers, it would he the Governor himself who would

Governor s special powers

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request their advice But Ministers, if prepared to advise, would have to accept responsibility to the Legislature for any action taken, since the Governor's special powers are not intended to be used for the purpose of enabling Ministers to escape a responsibility which 5 properly helongs to them We think, however, that the judicious use hy the Governor of these powers in the manner indicated (even though they are limited to the sphere of his special responsibilities) might often prove invaluable for the purpose of strengthening a Ministry which is willing to carry on the necessary functions of government hut cannot do so owing to factious and irresponsible 10 obstruction in the Legislature and which the Governor is satisfied cannot be replaced by any alternative Ministry which would not encounter similar treatment

The reserve powers of the Governor

115 Under most Constitutions, the power of dissolution is a potent instrument in bringing an irresponsible Legislature to its senses, for 15 members are thereby brought face to face with constituents to whom they must justify their conduct. It will be available in the Indian Provinces, according to the scheme of the White Paper, at the Governor's discretion This, we agree is as it should be, and we think that even the threat to use it will often enable a Governor to 20 give extremely effective support to bis Ministry, but we do not forget that under a system of communal representation even a general election is likely to produce a Legislature with the same complexion as its predecessor, at least until the time, which may be very far distant, when political parties are more independent of 25 communal divisions But, even if the constitutional machinery should hreak down altogether, the White Paper provides a means whereby the King's Government may still be carried on We have already drawn attention to the proposal that the Governor should in such an emergency be empowered to assume to himself (subject 30 to the over-riding authority of Parliament) all such powers vested by law in any provincial authority as appear to him to he necessary for the administration of the affairs of the Province, and therefore in the last resort be could suspend the Legislature and for the time being administer the Province without it Here also we think that, 35 if his Ministers were willing to support him, and to take the responsibility of doing so, be might properly inform them of his willingness to exercise his powers upon their advice, subject always to such directions as be might receive from the Governor-General, Provisions of this kind, as the Statutory Commission rightly observe, " are no 40 repudiation of the principle of self-government, they cannot come unto play unless the principle of self government is itself repudiated "1 We hope, and are willing to believe, that it will never become necessary to put them into operation, but we are none the less persuaded that their inclinion in the Constitution will have a bene- 45 ficial effect Nothing is more calculated to quicken a sense of responsibility in the Legislatures than a clear perception of the

Report, Vol II, para 99

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inevitable consequences of irresponsibility, and, though it may seem paradoxical to say so, we think that the existence in the background of these reserve powers of the Governor may well prove the real and most effective guarantee for the development of a genuine system of responsible government

Solution of the problem lies in Indian hands 116 We may be thought to have laid too great emphasis upon the difficulties likely to arise in the working of the new Constitution in an Indian Province, but we have endeavoured to describe the situation as it has presented itself to us, without prejudice or exaggeration, and if we have emphasised its difficulties it is because 10 we are anxious that Indians should not be misled by deceptive analogies with the constitutional practice of the United Kingdom Responsible government is not as it has sometimes seemed to us that they regard it, an automatic device or even a machine running

15 on a motive power of its own. It postulates conditions which Indians themselves have still to create, nor is a technique which the British people have painfully developed in the course of many generations to be acquired in India in the twinkling of an eye. The success of the experiment which we advocate can only be proved by 20 its results, and the political education both of the Legislatures and of the electorate is likely to be a slow process. But we are none the less convinced that Indians must be given the opportunity of purchasing their own experience, and we are at one with the Statutory Commission in seeing no future for responsible government in India unless 25 the difficulties to which we have thought it right to draw attention are not directly faced and in the end surmounted.

# (4) THE PROVINCIAL LEGISLATURE Unicameral and Bicameral Legislatures

117. The White Paper proposes that in each Governor's Province Province 30 there shall be a Provincial Legislature consisting, except in Bengal, the United Provinces, and Bihar, of the King, represented hy the Governor, and a Legislative Assembly. In the three Provinces named, it is proposed that the Legislature shall consist of the King, represented by the Governor, and a Legislative Council as well as a 35 Legislative Assembly. It is also proposed that after a period of ten years, a hicameral Legislature may abolish its Legislative Council, and that a unicameral Legislature may present an address to the Crown praying for the establishment of a Legislative Council.<sup>2</sup>

118. We are of opinion that Legislative Councils should also he Second 40 established in Bombay and Madras, where the conditions are substantially the same as in Bengal and the United Provinces. Apart from this, we concur in the proposals of the White Paper, subject to certain small changes in the composition of the Legislative Councils in Bengal, the United Provinces, and Bihar; and our recommendations

Madras

1 White Paper, Proposal 74.

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for all five Councils are set out in an Appendix to this part of our We think that where, after the ten-year period, a Province with a unicameral Legislature seeks to have a second Chamber, it ought to be allowed to indicate in the Address which 5 it presents to the Crown the size and composition of the Chamher which it desires to have. We do not doubt that the Crown would always endeavour to ascertain the wishes of the Province, but the Constitution Act should make it clear that the Province has the right to inform the Crown what its wishes are.

## The Composition of the Legislatures

119. The White Paper sets out in detail the proposed composition The Communal of cach Provincial Legislature, specifying both the allocation of scats Poons Pact and the method of election to them. In the case of the Legislative Assemblies, these are based upon the Communal Award issued by 15 His Majesty's Government on August 4th, 1932, with such modifications as have been rendered necessary (1) by the later proposal to create a new Province of Orissa, and (2) by the so-called Poona Pact of September 25th, 1932. It will be recalled that owing to the failure of the various communities to reach any agreement on .20 the subject, principally because of a radical divergence of opinion on the vital question of separate electorates and the distribution of communal seats, His Majesty's Government reluctantly undertook the task of devising themselves a scheme for the composition of the new Legislatures. When their Award was

published, they announced their determination not to entertain 25 any suggestions for its alteration or modification which were not supported by all parties affected, hut that if any of the communities mutually agreed upon a practicable alternative scheme, they would be prepared to recommend to Parliament that that alternative should be substituted for the corresponding provisions in the Award. In the 30 Award special arrangements were made to secure representation for the Depressed Classes. These were criticised by Mr. Gandhi as introducing an artificial division between two parts of the Hindu community, and he expressed his intention of "fasting unto death" as a protest against them. Thereupon negotiations were 35 initiated between the representatives of the caste Hindus and of the Depressed Classes, and an agreement resulted which was embodied in the Poona Pact. This agreement in the view of His Majesty's Government was within the terms of the announcement made by them, and therefore properly to be included as an integral 40 part of the Communal Award.

Effect of the Poons Pact. 120. The substance of the Poona Pact is the reservation to the Depressed Classes of a number of seats out of the seats classified as general seats in the Award, which means in effect out of Hindu seats, since Hindus form the great bulk of the general electorates. These 45

<sup>1</sup> Infra, p.

White Paper, Appendix III.

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reserved seats will, however, be filled by an unusual form of double election. All members of the Depressed Classes who are registered on the general electoral roll of certain constituencies will elect a panel of four candidates belonging to their own body, and the four persons who receive the highest number of votes in this primary 5 election will be the only candidates for election to the reserved seat; but the candidate finally elected to the reserved seat will be elected by the general electorate, that is to say, by caste Hindus and by members of the Depressed Classes alike. The number of seats reserved for the Depressed Classes under the Poona 10 Pact is practically double the number reserved under the Communal Award; but whereas under the latter there was to be a direct election to those seats by a separate Depressed Classes electorate, there will now be an election by the general electorate, although the candidates for election will have been previously 15 selected by means of a primary election at which members of the Depressed Classes only will be entitled to vote. Since the Pact does not, and indeed could not, increase the total number of seats assigned by the Communal Award to the different Legislatures, it follows that any increase in the seats reserved for the Depressed Classes must 20 involve a diminution in the seats which will be available for caste Hindus.

The White Paper proposals accepted. 121. The Communal Award was criticised by more than one witness who appeared hefore us on the ground that it operates inequitably in the case of Bengal, and even more inequitably with the modifications resulting from the Poona Pact. There was also criticism of the Award from other Provinces in which the Hindus are in a minority; hut elsewhere the Award appears to have met with acceptance, and we entertain no doubt that if any attempt were now made to alter or modify it, the consequences would be disastrous. 30 The arrangement which it embodies appears to us to be well thought out and balanced, and to disturb any part of it would be to run the risk of upsetting the whole. It accepts indeed the

principle of separate electorates for the Muhammadan, Sikh, Indian 35 Christian, Anglo-Indian, and European communities, but we recognize that this is an essential and inevitable condition of any new constitutional scheme We may deplore the mutual distrust of which the insistence on this demand by the minorities is so ominous a symptom, but it is unhappily a factor in the situation which 40 cannot be left out of account, nor do we think that we can usefully add anything to what we have already said on the subject accept therefore the proposals in the White Paper for the composition of the Legislative Assemblies As regards the Poona Pact, we are satisfied that it was made between persons who may properly be 45 regarded as representative of the caste Hindus on the one hand and of the Depressed Classes on the other, and for that reason we think that it falls within the terms of the announcement made by His Majesty's Government and that it ought not to be disturbed. We

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say frankly that we do not care greatly for it, and still less for the methods which brought it into existence. We are of opinion that the original proposals of His Majesty's Government constituted a more equitable settlement of the general communal question; 5 but the Pact was made by accredited leaders of the communities concerned, and was acquiesced in at the time by the communities themselves, or at least elicited no protest, and, if we say no more, it is because we should be reluctant to believe that Indian political leaders, who presumably look forward to occupying positions of 10 responsibility when India achieves self-government, will in the future be willing to be influenced by, or to yield to, pressure of the kind which was exerted at Poona two years ago.

122 The Communal Award did not extend to the Legislative Composition of Council of any Province The composition of these Councils which Chambers 15 is set out in the White Paper is however based upon the same principles as the Communal Award, but, since the Legislative Councils are much smaller bodies than the Legislative Assemblies and it would be impossible therefore to provide in them for the exact equivalent of all the interests represented in the Lower House, 20 it is proposed to include a certain number of nominated seats to be filled by the Governor at his discretion and accordingly available for the purpose of redressing any possible inequality. We think that this is a reasonable arrangement, and we have included provision for it in the detailed recommendations which are set 25 out in the Appendix above referred to.

# The Provincial Franchise

123 The provincial electorate under the existing franchise numbers The enisting franchise of franchise. approximately 7,000,000 men and women, or about 3 per cent of the population of British India It will be recalled that the 30 Southborough Committee in 1919, on whose recommendations the present franchise is based, were of opinion that the time was not ripe for any extension of the franchise to women, but Parliament required the Electoral Rules made under the Government of India Act to be so drawn as to enable the Provincial Councils to pass resolutions 35 admitting women to the franchise on the same terms as men, and resolutions for that purpose have in fact been passed in every Province But, since the franchise is in the main a property qualification and few Indian women are property owners in their Own right, the number of women thus admitted to the franchise 40 was very small and does not at the present time amount to more than about 315,000.

(C 14542)

The proposals of the Statutory Commission and the Franchise Committee.

124. The Statutory Commission were of opinion that the existing franchise was too limited and recommended that it should be extended so as to enfranchise about 10 per cent of the total population, and they laid a special emphasis in npon the need for 45 increasing the ratio of women to men voters. In 1932, hetween the Second and Third Sessions of the Round Table Conference.

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a Franchise Committee, which was presided over by one of our own number, was appointed by His Majesty's Government for the purpose of examining the whole subject, with a view to an increase of the electorate to a figure not less than the 10 per cent of the population suggested by the Statutory Commission nor more than the 25 per cent suggested at the First Session of the Round Table Conference. We are greatly indebted to the admirable and exhaustive Report of the Franchise Committee, which reached its conclusions after prolonged and intensive discussions in India with the Provincial Governments and with Provincial Franchise Committees; and we are satisfied that their recommendations have met with general support from Indian public opinion, expressed not only in India but also at the Third Session of the Round Table Conference, in the evidence of the witnesses who appeared before us, and in the discussions which we have had with the British-India delegates.

The proposals in the White Paper.

125 The proposals of His Majesty's Government for the Provincial Franchise are set out in Appendix V to the White Paper, and are essentially based, with certain modifications of minor importance only, save in the case of the women's franchise, on the Report of the Franchise Committee We are informed that the proposals have the 20 general support of the Government of India and of the Provincial The basis of the franchise proposed is essentially, Governments as at present, a property qualification (that is to say, payment of land revenue or of rent in towns, tenancy, or assessment to income tax), supplemented by an educational qualification and by certain 25 special qualifications designed to secure an adequate representation of women and to enfranchise approximately 10 per cent of the Depressed Classes (called in Appendix V Scheduled (astes) by the enfranchisement of retired, pensioned and discharged officers noncommissioned officers and mon of His Majesty's Regular Forces, 30 and by the provision of a special electorate for the seats reserved for special interests, such as labour, landlords and commerce individual qualifications vary according to the circumstances of the but the general effect of the proposals is to different Provinces enfranchise approximately the same classes and categories of the 35 population in all Provinces alike

Retimate of numbers of proposed electorate 126 We were warned, and can readily believe, that pending the preparation of Electoral Rolls the figures furnished to us must of necessity be regarded as only approximate. It is, however, estimated that the proposals in the White Paper would, if adopted, create a 40 male electorate of between 28,000,000 and 29,000,000, and a female electorate of over 6,000,000, as compared with the present figures of 7,000,000 and 315,000, that is to say, 14 per cent of the total population of British India would be enfranchised as compared with the present 3 per cent, and the proposals, therefore, go beyond the 45 percentage suggested by the Statutory Commission and are nearly midway between the maximum and minimum percentages suggested by the First Round Table Conference

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127 We are satisfied on the information before us that the General effect proposals taken as a whole are calculated to produce an electorate of proposals representative of the general mass of the population and one which will not deprive any important section of the community of the means 5 of giving expression to its opinions and desires. The proposals will in the case of most Provinces redress the halance between town and country, which is at the present time too heavily weighted in favour of urban areas, they will secure a representation for women for the Depressed Classes, for industrial lahour, and for 10 special interests, and they will enfranchise the great hulk of the small landholders, of the small cultivators, of the urhan ratepayers, as well as a substantial section of the poorer classes

128 The difficulties which must always attach to any great and The proposals sudden extension of the franchise, both in connection with the madellable 15 compilation of the electoral roll and in the actual conduct of elections, arc mainly administrative in India, hecause literacy is rare and the number of persons available to act as efficient Returning Officers extremely limited These are practical obstacles which ardent reformers are sometimes apt to forget, but we are informed that, 20 while the strain of the first election will undoubtedly he considerable the electorates proposed, subject to certain minor modifications and to one more important modification which we recommend helow in the case of Bihar and Orissa, are accepted by the responsible authorities as administratively practicable. The existing system of election 25 is the direct system, which has been in force since 1920, and appears on the whole to have worked well The Franchise Committee after an exhaustive investigation of possible alternatives recommended its retention, and they have the support both of the authorities in India and of Indian public opinion The proposals in the White 30 Paper are accordingly based upon direct election by territorial constituencies in the case of the various communities, special arrangements being made for election in the case of the constituencies which represent special interests. We are informed that His Majesty's Government are not yet in a position to submit their final proposals 35 for the method of election to the seats reserved for women or for the qualifications to be prescribed in the case of certain of the constituencies representing special interests. These matters are still under investigation in India and proposals with regard to them must depend on the result of further expert examination

129 We have carefully examined a suggestion to substitute for Suggestions for direct election in territorial constituencies an indirect system of of election election by means of local groups At first sight an arrangement of considered. this nature would appear to have the advantage of widening the basis of the franchise, of giving an equal vote at the primary stage to every 45 adult, of facilitating voting by the primary elector, and of securing a more experienced and intelligent secondary elector, and having regard to these considerations, we felt it our duty, despite the fact

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that discussion and experiment in India had led the Indian Franchise Committee to reject it, again to consider its practicability effect of the evidence given before us by witnesses of great experience has however heen to show that superficially attractive as a system 5 of group election may he, the objections to it in existing conditions We have been especially impressed by the in India a e decisive administrative difficulties involved in constituting electoral groups,

given the existence of caste and the reality of the communal problem, and by the argument that faction runs so high in many Indian villages that group elections would inevitably become highly contested and 10 that it would be necessary to provide for them all the machinery of an ordinary election. We were also informed not only that conditions in the villages had changed so materially of late that the circumstances which some six or seven years ago made it justifiable to put forward a proposal for the use of the group system no longer existed, but 15 that there was no real support for the introduction of such a system either from public or from official opinion in India. In the light of our further investigation of this question we are satisfied that in the case of the Provincial Legislatures the balance of advantage clearly lies in present conditions in retaining the system of direct 20 election.

The White Paper proposals spiroved
with certain
modifications

130. We regard the franchise proposals in the White Paper as generally satisfactory, subject to the modifications which we indicate below. In the case of the general franchise, we think that only one modification of substance is necessary. In Bihar and Orissa it is 25 proposed that the qualification in rural areas shall be based upon payment of the chaukidari tax at the minimum rate of six annas per annum; but since the White Paper was laid before Parliament the Provincial Government after further investigation have reported that administrative considerations make it impossible to deal with 30 so large an electorate as this franchise would create. We recommend that, in view of this undoubted difficulty, the rural franchise in Bihar and Orissa should be raised from six annas to nine annas; and we also recommend that in view of the dislocation caused by the recent earthquake, the general rural franchise in the Province 35 should as a temporary measure be fixed as twelve annas for the purpose of the first election under the new Constitution. We recognise that these recommendations, if adopted, will produce in Bihar and Orissa a percentage of enfranchisement much smaller than in any other Province, but we think that they are justified 40 by the special circumstances of the case. We also recommend as part of the arrangements which have been made with His Exalted Highness the Nizam in connexion with the Berars, that in the case of Berar constituencies the educational qualification should include the passing of a corresponding examination in Hyderabad and that the 45 military service qualification should cover retired, pensioned or discharged officers, non-commissioned officers or soldiers of His Exalted Highness's regular forces.

<sup>1</sup> Corresponding modifications will be necessary for Sambalpur and Santhal Parganas, for which a special franchise is proposed in the White Paper.

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Women's runchise proposals franchis compared with Franchise Committee's recommenda-

131. The present ratio of women to men electors for the Provincial Legislatures is approximately 1:20. The recommendations of the Franchise Committee would increase the ratio to 1:4.5 by extending the franchise to all women (1) who possess a property qualification in their own right; (2) who are the wives or widows of men with the property qualification for the present Provincial Legislatures (slightly different qualifications are proposed for Bihar and Orissa and for the Central Provinces); and (3) who have an educational qualification of literacy (this last qualification to be registered only on application by the potential voter). These recommendations 10 are estimated to produce a women's electorate of some 6,000,00c. The proposals in the White Paper are identical with those of the Franchise Committee, save that women qualified in respect of property held by a hasband are required to make application to be

15 placed on the electoral roll, and that the educational standard has in most cases been substantially raised We are informed that on the latest estimates available, these proposals would produce a women's electorate of some 6,000,000 as against a male electorate of between 28,000 000 and 29,000,000, a 20 ratio approximately equivalent to that recommended by the Franchise Committee But of these 6,000,000 only some 2,000,000, that is to say, women qualified to vote in respect of the ownership of property in their own right, would automatically be placed upon the roll, for the remainder, who would be qualified in respect either 25 of property held by a husband or of education, an application to the Returning Officer would be required We have received very strong representations from representatives of women's organisations and from representative women both in this country and in India that the effect of this proposal would be to prejudice very seriously the 30 position of women under the new Constitution On the other hand, we are informed that the authorities in India view with apprehension any proposals which would substantially increase the administrative difficulties likely in any event to be caused in polling the new and extended electorates, and they have urged also the importance of 35 giving full weight in connection with the women's franchise to Indian social conditions

132. Apart from the difficulties involved in the retention of the Vital "application" requirement, we have received strong representations in favour of the substitution of the literacy qualification (to be franchise 40 registered on application) recommended by the Franchise Committee for the qualification of an educational standard proposed in the White Paper It has been urged before us that in many Provinces the educational standard proposed in the White Paper is so high that it will seriously prejudice the legitimate claims of women in 45 general, and in particular the woman who has been educated at home Representations have also been made to us in favour of the extension of the franchise to the wives of men with the military service qualification for the vote and the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of 50 the Regular forces.

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We have given anxious consideration to all these questions. We concur in everything which has been said by the Statutory Commission on the necessity for improving the status and extending the influence of the women of India and it is in our opinion impossible to exaggerate 5 the importance of securing in the new Constitution a substantial increase of enfranchised women voters. "The women's movement in India "the Commission observe," holds the key of progress, and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world 10 until its women play their due part as educated citizens "1 This is profoundly true and must be realised by every Indian who has the interests of his country at heart. We are only too well aware of the formidable obstacles which every reformer in this field will encounter, and we cannot forget the painful impression made upon us by one 15 witness, claiming (we hope and believe without justification) to represent the great majority of orthodox Hindus, part of whose evidence could only be construed as approving, or at least condoning, the dreadful practice of suttee We are therefore all the more convinced of the necessity for strengthening the position 20 of women under the new Constitution, and we are not satisfied in the light of the discussions which have taken place that the proposals in the White Paper are adequate to achieve this object. We are particularly impressed by the unfortunate consequences likely to follow from the "application" requirement, though we fully recognise that under existing conditions there are strong arguments in favour of it which can be adduced. We sympathise also with the contention that the standard of the educational qualification is too high, and we are wholly in agreement with those who desire to enfranchise the wives of men with the military service qualification for the vote, and the pensioned widows and mothers of Indian officers, non-commissioned officers and soldiers of the Regular forces.

Modifications in White Paper proposals recommended.

133. In these circumstances, after a careful examination of the whole problem and in the light of further enquirles which have . heen made at our request by the Government of India and the local Governments, we recommend the following modifications in the White Paper proposals for the women's franchise; and we record our opinion that it should not be beyond the administrative capacity of the Provincial Governments to give effect to them, even though they may involve some temporary difficulties in the early days of the new Constitution: -(1) that the "application" requirement should be dispensed with in the case of women qualified in respect of a husband's property in Bengal, Bihar and Orissa, the Central Provinces, and in urban areas in the United Provinces; (2) that in Bombay, the Central Provinces, the United Provinces, the Punjah, and Assam a literacy qualification should be substituted as the educational qualification; (3) that in Madras, Bengal, the United Provinces, the Central Provinces, the Punjab, and Bihar and Orissa, the wives of men with the military service qualification for the vote, and pensioned widows and mothers of Indian officers, non-commissioned

1 Report, Vol. I, para. 71.

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officers and soldiers of the Regular forces should be enfranchised, registration in this case being on application only; and (4) that in cases in which registration will still be only on application such steps as are possible should he taken to mitigate the deterrent effect of this requirement on the registration of votes by women, e.g., by permitting application by the husband (suhject to suitable penalties in the event of false statements, etc.) on behalf of a wife, and by the entry of a woman's name as "wife of A.B.C." in cases in which, for social or religious reasons, there is any objection to the entry of the actual name on the electoral roll.

Recommendetions with regard to women's franchise.

134. Before leaving this subject we wish to place on record our view that it is important to attain at as early a date as possible, and if practicable before the second election under the new Constitution, the ratio of not less than approximately one woman to five men electors, save possibly in Bihar and Orissa, which was recommended by the Indian Franchise Committee. We understand that in most Provinces under the proposals embodied in the White Paper, with the modifications proposed by us above, the ratio of women to men eligible to exercise the franchise will he higher than 1:5; but the deterrent effect of the "application" requirement, so long as it is necessary to retain it, particularly in the case of women qualified in respect of a husband's property, is likely in practice to produce a much less favourable ratio of women to men on the electoral registers. In certain Provinces, moreover, the ratio even of women eligible to vote to men may apparently be less favourable than 1:5. The remedy for this situation is, in our opinion, the withdrawal of the

"application" requirement, at any rate in the case of women qualified in respect of a husband's property, at as early a date as practicable, with a consequent increase in the number of women on 30 the electoral roll. We are in favour also of the lowering of the educational standard for women to literacy in those Provinces in which a higher standard is now proposed not later than the second election under the new Constitution; this should result in the Provinces in question in a further increase in the number of women eligible to 35 exercise the franchise.

135. The Franchise Committee recommended the adoption of the The education Upper Primary Standard as a general educational qualification for for men. men. The White Paper substitutes a higher standard in certain Provinces. It has been represented to us that the adoption of a 40 high educational qualification, and in particular of the matriculation standard, would have an unfortunate result on male education and would discriminate against the hoy attending the vernacular middle school in favour of the boy matriculating in the secondary school This question has at our request heen further examined by the 45 Government of India and the Provincial Governments; though they admit that there may be some force in the criticism, they do not consider the risks involved as serious enough to call for any modification of the proposal in the White Paper; and we do not feel able, after considering the matter, to differ from their conclusion.

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136. We desire in conclusion to drawn attention to the question of Election expenses and corrupt practices. The White Paper proposes corrupt practices. that, save as otherwise provided in the Constitution Act itself, the Provincial Legislatures should be empowered to make provision 5 for matters connected with the conduct of elections, but that until they do so existing laws or rules, including laws or rules providing for the prohibition and punishment of corrupt practices or election offences, should remain in force. The Statutory Commission observe that they have no wish to over-emphasise, but that they could not 10 disregard the indications to them in more Provinces than one of the presence and effects of corruption, and they urge therefore that suitable limits should be defined and enforced for election outlay, the existing law being in their opinion inadequate. We think that this is a matter which may properly engage the attention of His Majesty's Government, and it may be thought desirable that the Constitution Act itself should emhody provisions with regard to it.

137. The question of a future extension of franchise is one which Future cannot he divorced from the question of other amendments of the franchise 20 Constitution Act. We do not therefore discuss it in this place and reserve our observations for a later part of our Report, in which the whole problem of what may conveniently he called Constituent Powers is considered.

# Powers of Provincial Legislatures

138. We have referred elsewhere to the Lists in Appendix VI of the Provincial White Paper, which set out the subjects with respect to which the Legislatures Provincial Legislatures will have the power of making laws for the Peace and good government of the Province, an exclusive power in one case (List II) and in the other a power exercisable concurrently 30 with the Federal Legislature (List III), and further discussion of them is unnecessary here. Certain restrictions on these legislative powers are however proposed. In the first place the Provincial Legislatures

will not be competent to make any law affecting the Sovereign or the Royal Family, the sovereignty or dominion of the Crown over any part of British India, the law of British nationality, the Army, Air Ferce, and Naval Discipline, Acts, or the Constitution Act itself, save in the last case in so far as the Constitution Act otherwise provides. Few, if any, of these subjects are likely to come within the scope of the legislative powers of the Provincial Legislatures, as defined by Lists II and III, and the restriction is therefore more apparent than real, though we agree that it is a proper one. The Legislatures will also have no power to make certain laws of a discriminatory kind, a subject which it will be more convenient to discuss later. Secondly, the consent of the Governor-General, given

<sup>1</sup> Report, Vol. 11, para 110.

§ Infra, paras 350-377

§ White Paper, Proposals 119-120.

§ Infra, paras 328 at asq.

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at his discretion, will be required to the introduction in a Provincial Legislature of legislation which (1) repeals, amends, or is repugnant to, any Act of Parliament extending to British India or any Governor-General's Act or Ordinance, or (2) which affects any Department reserved to the control of the Governor-General, or (3) which affects the procedure regulating criminal proceedings against European British subjects. Thirdly, the consent of the Governor, given at his discretion, will be required to the introduction of legislation (1) which repeals, amends, or is repugnant to, a Governor's Act or Ordinance, or (2) which affects religion or religious rites and usages

The White Paper proposals approved

139 We have little comment to make upon these proposals It was indeed suggested to us that the necessity for the Governor's consent to the introduction of legislation affecting religious rites and usages might prejudice attempts to promote valuable social reforms. We do not think that social reform is likely in the least to suffer by its retention, and we are clearly of opinion that it would be unwise for the present to abandon a safeguard which is already in existence and which might prove very necessary at times of religious or communal We had also thought at first that a Provincial disturbance Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor to its introduction in the Legislature might We understand, bowever, that the great bulk of the existing law in India is the work of Indian legislative bodies and that there are in fact very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have no power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the provincial sphere In these circumstances we think that the proposal should stand; but the Governor's Instrument of Instructions might perhaps direct him to reserve bills which appear to him to fall within this category

Governor's

140 The proposals with regard to the Government's assent to Bills are in standard consitutional form. They provide that the Governor may at his discretion either assent to a Bill, or refuse his assent, or may reserve the Bill for the consideration of the Governor-General, who may in his turn either assent or withhold his assent or reserve the Bill for the signification of His Majesty's pleasure. We note a proposal whereby the Governor would be empowered to return a Bill to the Legislature for reconsideration in whole or in part,

together with such amendments, if any, as he may recommend. A provision of this kind (which has Dominion as well as Indian precedent in its favour) may, we think, prove extremely useful for 45 the purpose of avoiding or mitigating a conflict between the Governor, or perhaps the Governor and his Ministers, and the Legislature, and will afford opportunities for compromise which would not otherwise be available

1 White Paper Proposal 88

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141 It is proposed that the powers of a Provincial Legislature Register Area. shall not extend to any part of the Province which is declared to be an "Excluded Area" or a "Partially Excluded Area" In relation to the former, the Governor will himself direct and control 5 the administration, in the case of the latter he is declared to have a special responsibility In neither case will any Act of the Provincial Legislature apply to the Area, inless by direction of the Governor given at his discretion, with any exceptions or modifications which The Governor will also be empowered at his he may think fit 10 discretion to make regulations having the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. We have already expressed our approval of the principle of Excluded Areas, and we accept the above proposals as both necessary and 15 reasonable 1

# Procedure in the Legislatures

142 The proposals in the White Paper are rightly designed to give Ordinary a Provincial Legislature ample power to regulate its own procedure and husiness, but we note with approval that the Governor is to 20 be empowered at his discretion after consultation with the presiding officer of the Legislature, to make rules regulating procedure and the conduct of business in relation to matters arising out of, or affecting, any of his special responsibilities, and that any rules made hy him for this purpose will prevail over any rule made by the Legislature 25 itself which may conflict or be inconsistent with them \*

143 The proposals with regard to financial procedure secm to us financial generally to be well considered. They are hased upon the principle, which must always be the foundation of any sound system of public finance, that no proposal can be made for the imposition of taxation, 30 for the appropriation of, or affecting or imposing any charge upon, public revenues without the recommendation of the Governor, that is to say, it can only be made on the responsibility of the Executive We understand that, apart from this, legislative procedure in matters of finance differs in India from that which 35 exists in the United Kingdom There is, for example, no annual Appropriation Act in India, the proposals for the appropriation of revenue being submitted to the Legislature in the form only of Demands for Grants, and a resolution of the Legislature approving a Demand is sufficient legal warrant for the appropriation No 40 substantial alteration in this system is suggested in the White Paper, and, though we have given some consideration to the matter, we are satisfied that no good reason has been shown for modifying in the new Constitution Act a system with which Indians are familiar and which appears to have worked sufficiently well in 45 practice

White Paper, Proposal 108
 White Paper, Proposal 102
 White Paper, Proposal 95

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Annual proposals for appropriation of

- 144 The proposals for the annual appropriation of revenue will, according to the White Paper, be grouped in three categories: (1) those which will not be submitted to the vote of the Legislature, though (with one exception) they will be open to discussion, (2) those which will be so submitted, and (3) proposals, if any, which the Governor may regard as necessary for the fulfilment of any of his special responsibilities The importance of those which fall into the first category makes it desirable that we should set them out in full, and they are as follows
  - (1) Interest, Sinking Fund Charges and other expenditure relating to the raising, service, and management of loans, expenditure fixed by or under the Constitution Act, expendi ture required to satisfy a decree of any Court or an arbitral award.

(11) The salary and allowances of the Governor (these will not be open to discussion), of Ministers, and of the Governor's personal or secretarial staff

(iii) The salaries and pensions, including pensions payable to their dependents, the Judges of the High Court or Chief Court or Judicial Commissioners, and expenditure certified by the Governor, after consultation with his Ministers, as required for the expenses of those Courts,

(iv) Expenditure debitable to Provincial revenues required for the discharge of the duties imposed by the Constitution Act on

the Secretary of State,

(v) The salaries and pensions payable to, or to the dependents of, certain members of the Public Services and certain other sums payable to such persons

Non votable heads of expenditure

145 It will be observed that most of these Heads of Expenditure are identical with, or analogous to, payments which would in the United Kingdom be described as Consolidated Fund charges and as such would not be voted annually by Parhament The two principal exceptions are the salaries of Ministers and the salaries and pensions payable to certain members of the Public Services or to their dependents We think the inclusion of Ministers' salaries is justified The convention in this country whereby a motion for a nominal reduction in the salary of a Minister has become a convenient method of criticizing a Department or ventilating gnevances appears not to have established itself in India On the contrary, Legislatures have been known to mus-use their powers in such a way as to deprive Ministers of the whole of their salaries, and have thus rendered it impossible for the Governor to have not only the Ministry of his choice but any Ministry at all, a notable example of the way in which the exercise of its powers by a Legislatuie may by constitutional usage be made to serve a valuable purpose in one country and yet prove wbolly destructive in another We therefore

# 1 White Paper, Proposals 95-100

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approve the proposal in the White Paper, and we are of opinion that ample, and no less convenient, opportunities for criticizing the Executive will still remain The non-votable character of salaries and pensions payable to members of the Public Services raises questions of a different kind which we propose to consider later 1 'The separate specification of the proposals regarded by the Governor as necessary for the fulfilment of his special responsibilities calls for no comment.

146 All proposals for appropriation, other than those relating to System of Demands for the heads of expenditure enumerated above, will be submitted Grants. to the Legislature in the form of Demands for Grants, and the Legislature will have the right to assent to, or reduce, or to refuse assent to, any Demend including those which the Governor has proposed as necessary for the fulfilment of his special responsibilities 15 Except in the latter case (the Governor being empowered to restore any such Grants, if he thinks it desirable to do so), the decision of the Legislature is final, and it is this power in the matter of supply which will give the Legislature its real control over the Executive have already discussed the difficulties which may arise if that power 20 is factiously or irresponsibly exercised, and it is not necessary to repeat what we then said. It has been objected that the Heads of Expenditure which will not be subject to the vote of, but only open to discussion by, the Legislature are so extensive as materially to diminish the field of responsible government in the Province. We 25 are satisfied that there is little, if any, substance in this objection Most of the Heads of Expenditure, as we have pointed out, would not, even in the United Kingdom, be the subject of an annual vote hy Parliament, and the inclusion of those which do not fall within that category is for reasons which we have given elsewhere clearly 30 justified as a matter of reasonable precaution, if responsible government itself is to be a reality in the future.

147. It is proposed that, in those Provinces where the Legislature Powers of Legislature Powers of Legislature is bicameral, Money Bills shall be initiated in, and Demands for Grants submitted to, the Legislative Assembly alone We think that modicis 35 this is right, and that the Legislative Council should not be regarded Chambers in any sense as a body having equal powers with the Legislative Assembly, but rather a body with powers of revision and delay, for the purpose of exercising a check upon hasty and ill-considered legislation. Nevertheless, the possibility of a conflict between the 40 two Chambers cannot be disregarded. The method proposed by the White Paper for resolving such a conflict is to give the Governor the power, after a lapse of three months, to summon the two Chambers ' to meet in a Joint Session for the purpose of reaching a decision on any legislation which has been passed by one Chamber but rejected 45 by the other, the Bill being taken to have been duly passed by both

Conneils and

# Infra, paras 289 et seq. White Paper, Proposal 91.

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Chambers if approved hy a majority of the members voting at the We do not think that this is a satisfactory solution. The period of three months is too short, and would make the powers of the Legislative Council derisory, it ought in our opinion to be one 5 of twelve months at least, except in the case of a Money Bill, the delay of which even for three months might obviously have mischievous consequences It may be urged that the sessions of the Provincial Legislatures will be comparatively short and that it is never likely in practice that the period of delay will be only three months, but 10 we regard the difference as one of principle. The case of a Bill on which in the Governor's opinion a decision cannot, consistently with the fulfilment of his special responsibilities, be deferred is on a different footing, and we agree that in this case the Governor must himself be empowered to summon forthwith a Joint Session. 15 It seems to us also that, in view of the relative powers of the two Chambers, a Bill introduced in the Legislative Council but rejected hy the Legislative Assembly should lapse, and that the machinery of a Joint Session should be confined to the converse case, and should be put in motion only if the Legislative Assembly so desires. There should be no possibility of further amendment in the Joint 20 Session save for amendments relevant to the points of difference which have arisen between the two Chambers, and the decision of the Presiding Officer, who will presumably be the President of the Upper Chamber, on the admissibility of any amendment should be final and conclusive.

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APPENDIX (I)

Composition of Provincial Legislative Councils

			Bengal.	Bihar	Bombay.	Madras	United Provinc
Nominated by the (		nor					
Not less than			6	3	3	6	6
Not more than	1.		8	4	4	8	Ř
General	٠. <u>٦</u>	1	10	9	20	16	8 34
Muhammadan	•	में हैं	17	4	5	4	17
European	••	Direction of the control of the cont	3	1	1	1	1
Indian Christians					_	2	_
Elected by the met single transferab members of the	le vot	e by					
Lower House	•••		27	12		23	_
Total-	••						
Not less than			63	29	29	54	58
Not more than		••	65	30	30	56	60

The members directly elected will be elected from communal constituencies. The franchise will be based on high property qualifications, combined with a qualification based on service in certain distinguished public offices, as is proposed in Appendix V, Part II, of the White Paper.

The qualifications above indicated will also apply to candidates, but special provisions may be necessary in the case of women and the Demessed Classes.

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# II.—THE FEDERATION Federation and the Crown

Federal Union of States and Provinces,

148. We pass now to the proposal in the White Paper to create a new polity in which both the British India Provinces and the Indian States will be federally united. On the principle of the 5 proposal we can entertain no doubts; but this will be a Federation of a kind for which, so far as we are aware, no historical precedent is to he found Federations, whether in the past or at the present day, have commonly resulted from the union of independent, or at least autonomous, States, which have agreed to come together for the 10 purpose of creating a new central organism deriving its powers and authority from the surrender by the federating units of a defined part of their own sovereignty or autonomy, the powers and authority thus derived heing thenceforward exercised by the new organism in the interests and on behalf of the whole body. The Indian States 15 possess sovereignty in varying degrees, but at the present moment the Indian Provinces are not even autonomous; for they are subject to both the administrative and legislative control of the Government of India and such authority as they exercise has only

- 20 been devolved upon them under a statutory rule-making power by the Governor-General in Council It is therefore the first condition precedent of a federal scheme that these Provinces should be endowed with an autonomy and individuality of their own, but since it is proposed that the Act which hrings this about should at the same 25 time create a potential Federation, the new central organism cannot be derived from any formal agreement hetween the Provinces and the States, hut must come into existence by new and hitherto unknown methods It must be created, with the aid of Parliament, through the instrumentality of the Crown
- 149 The dominion and authority of the Crown extends over the Existing distribution of whole of British India and is exercised subject to the conditions prescribid by the existing Government of India Act It is derived British India. from many sources, in part statutory and in part prerogative, the former having their origin in Acts of Parliament, and the latter in 35 rights based upon conquest, cession or usage, some of which have been directly acquired, while others are enjoyed by the Crown as successor to the rights of the East India Company The Secretary of State is the Crown's responsible agent for the exercise of all authority vested in the Crown in relation to the affairs of India, 40 and for the exercise also of certain authority which he derives directly from powers formerly vested in the Court of Directors and the Court of Proprietors of the East India Company, whether with or without the sanction of the body once known as the Board of The superintendence, direction and control of the civil Control

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and military Government of India is declared by the Government of India Act to be vested in the Governor-General in Council, and the government or administration of the Governors' and Chief Commissioners' Provinces respectively in the local governments, 5 but powers of superintendence, direction and control over "all acts, operations and concerns which relate to the government or revenue of India" are, subject to substantial relaxation in the transferred provincial field, expressly reserved to the Secretary of State, and whether the Governor General in Council exercises (though no doubt. 10 under the general control of the Secretary of State) original powers of his own, or is only the agent and mouthpiece of the Secretary of State, remains perhaps an open question. It is one which has been the subject of dispute in the past between Secretaries of State and the Governor General, but the spheres of their respective juris-15 dictions are now well recognised, and the Secretary of State, though maintaining his powers of control, does not in practice exercise any powers of direct administration, a result to which the increasing authority of the Indian Legislature has no doubt materially contributed

150 It is clear that in any new Constitution in which autonomous Legal basis of Provinces and Indian States are to be federally united under the Crown, not only can the Provinces no longer derive their powers and authority from devolution by the Central Government, but the Central Government cannot continue to he an agent of the Secretary 25 of State Both must derive their powers and authority from a direct grant hy the Crown We apprehend, therefore, that the legal basis of a reconstituted Government of India must he, first, the resumption • into the hands of the Crown of all rights, authority and jurisdiction in and over the territories of British India, whether they are at 30 present vested in the Secretary of State, the Governor-General in Council, or in the provincial Governments and Administrations, and

second, their redistribution in such manner as the Act may prescribe between the Central Government on the one hand and the Provinces on the other. A Federation of which the British India Provinces are the constituent units will thereby be brought into existence; 35 but since the rights, authority and jurisdiction which will be exercised on hehalf of the Crown by the Central Government do not extend to any Indian State, unless the Ruler has agreed to their exercise for federal purposes in relation to the State, it follows that the accession of an Indian State to the Federation cannot take place otherwise 40 than hy the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation; it will only prescribe a method whereby the State may accode and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. 45 Their Rulers can enter or stand aside from the Federation as they think fit. They have announced their willingness to consider federation with the Provinces of British India on certain terms;

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but whereas the powers of the new Central Government in relation to the Provinces will cover a wide field and will he identical in the case of each Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of a similar range of powers in relation to themselves. This is a further aspect of the matter which differentiates the proposed Federation from any other, for not only will some of the constituent units be States whose subjects will continue to owe allegiance to their own Rulers, modified only within the federal sphere, but the powers and authority of the Central Government will 10 differ as between one constituent unit and another.

Proposed scheme a practicable one.

151. The above is in broad outline the scheme adopted in the White Paper, and it seems to us the only method by which such a Federation could be created. We have already said that there are no precedents to which recourse might be had for guidance, though the recent 15 devolution of certain powers of the Spanish Republic, hitherto a completely unitary State, on the new autonomous Province of Catalonia perhaps affords a partial and limited analogy; but we know of no Federation with constituent units which occupy a position similar to that of any Indian State acceding to the Indian Federation. The 20 latter will be unique in character among the Federations of the world; hut though for that reason difficulties and complexities are inevitable in the scheme proposed, we regard it as neither unnatural nor impracticable. It will undoubtedly demand for its successful working goodwill on both sides; hut that is a postulate of every Federation, 25 and our enquiry gives us no reason to suppose that goodwill will be wanting.

Rulers' Instruments of Accessor. 152. It is proposed that the Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession; and this Instrument (whatever form it may 30 take) will, we assume, enable the powers and jurisidation of the Ruler in respect of those matters which he has agreed to recognise as federal subjects to be exercised by the federal authorities brought into existence by the Constitution Act; that is to say, the Governor-General, the Federal Legislature, and the Federal Court, but strictly 35 within the limits defined by the Instrument of Accession. Outside these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. The list of exclusively federal subjects is set out in List I of Appendix VI to the White Paper, to which we have already drawn attention, 40

and we understand the hope of His Majesty's Government to be that Rulers who accede will in general he willing to accept items 1 to 48 of List I as federal subjects. We have indicated our view that the Lists in Appendix VI require some modification, a matter 45 with which we deal hereafter; and, therefore, though we speak of

White Paper, Proposal 1.
White Paper, Proposals 2-3.

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items 1 to 48, we do not wish to be understood as necessarily implying that we accept all these items as appropriately falling within the federal sphere, so far as regards the Indian States, or that we think that the definition of some of them is not susceptible of improvement. 5 Subject to this, it is convenient to consider the questions which arise in connection with the Instrument of Accession on the basis of the White Paper proposal, with the explanations which have been given to us on behalf of His Majesty's Government.

153. It would, we think, be very desirable that the Instruments of Instruments 10 Accession should in all cases be in the same form, though we recognise far as that the list of subjects accepted by the Ruler as federal may not be joint identical in the case of every State. Questions may arise hereafter whether the Federal Government or the Federal Legislature were form. competent in relation to a particular State to do certain things or to 15 make certain laws, and the Federal Court may be called upon to pronounce upon them; and it would in our opinion be very unfortunate if the Court found itself compelled in any case to base its decision upon some expression or phraseology peculiar to the Instrument under review and not found in other Instruments, 20 Next, we think that the lists of subjects accepted as federal by Rulers

willing to accede to the Federation ought to differ from one another as little as possible, and that a Ruler who desires in his own case to except, or to reserve, subjects which appear in what we may perhaps describe as the standard list of federal subjects in relation 25 to the States ought to be invited to justify the exception or reservation, before his accession is accepted by the Crown. We do not doubt that there are States which will be able to make out a good case for the exception or reservation of certain subjects, some by reason

of existing treaty rights, others because they have long enjoyed 30 special privileges (as for example in connection with postal arrangements, and even currency or comage) in matters which will henceforward be the concern of the Federation; but in our judgment it is important that deviations from the standard list should be regarded in all cases as exceptional and not be admitted as of course. We do 35 not need to say that the accession of all States to the Federation will

be welcome; but there can be no obligation on the Crown to accept an accession, where the exceptions or reservations sought to be made by the Ruler are such as to make the accession illusory or merely colourable.

154. We regard the States as an essential element in an All-India Accession of Federation; hut a Federation which comprised the Provinces and sufficient only an insignificant number of the States would scarcely be of States deserving of the name. This is recognised in the White Paper, where it is proposed that the Federation shall be brought into exist- Federation.

45 since by the issue of a Proclamation hy His Majesty, but that no such Proclamation shall be issued until the Rulers of States representing not less than half the aggregate population of the States and entitled to not less than half the seats to be allotted to the States in the

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Federal Upper Chamber have signified to His Majesty their desire to accede to the Federation.¹ We accept the principle of this proposal. We observe also that it is proposed that both Houses of Parliament should first present an Address to His Majesty praying that the Proclamation may be issued. We approve this proposal, because 5 Parliament has a right to satisfy itself not only that the prescribed number of States have in fact signified their desire to accede, but also that the financial, economic, and political conditions necessary for the successful establishment of the Federation upon a sound and stable basis have been fulfilled. This is a matter which we discuss 10 more fully in a subsequent part of our Report, and it is unnecessary to do more than allude to it here.² We note also in passing that the establishment of autonomy in the Provinces is likely to precede the establishment of the Federation; but in our judgment it is desirable, if not essential, that the same Act should lay down a constitution 15 for both, in order to make clear the full intention of Parliament.

Differentiation of functions of Governor-General and Viceroy.

155. We have spoken above of the rights, authority and jurisdiction of the Crown in and over the territories of British India. But the Crown also possesses rights, authority and jurisdiction elsewhere in India, including those rights which are comprehended 20 under the name of paramountcy. All these are at present exercised on behalf of the Crown, under the general control of the Secretary of State, by the Governor-General in Council; and it will be necessary that they should also be resumed in their entirety into the hands of the Crown. But clearly they 25 cannot under the new Constitution be exercised on behalf of the Crown by any federal authority, save in so far as they fall within the federal sphere, and only then when they affect a State which has receded to the Federation. The White Paper proposes that (subject to the exception which we have mentioned) they should in future be 30 exercised by the representative of the Crown in his capacity as Viceroy; and that, in order to put the distinction beyond doubt, the office of Governor-General should be severed from that of Viceroy. We agree with what we conceive to be the principle underlying this proposal, but we are not clear that the method employed to 35 give effect to it is entirely appropriate. We agree that there must be a legal differentiation of functions in the future; and it may well be that His Majesty will be pleased to constitute two separate offices for this purpose. But we assume that for many years to come, if not always, the two offices will continue to be held hy the 40 same person, and, so long as this is so, we think that the title of Viceroy should attach to him in his double capacity; we do not presume to suggest a designation for the separate office whose incumbent will represent the Crown in its relations with the States outside the Federal sphere. But the suggestion which we have made 45

White Paper, Proposal 4.
Infra, para. 268.
White Paper, Introd., para. 10.

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involves no departure from the underlying principle of the White Paper that outside the Federal sphere the States relations will be exclusively with the Crown and that the right to tender advice to the Crown in this regard will lie with His Majesty's Government.

# The Area of Federal Jurisdiction

156. The area of federal jurisdiction will extend in the first instance Area of to the whole of British India, which comprises at the present time the Governors' Provinces and the Chief Commissioners' Provinces of British Baluchistan, Delhi, Ajmer-Merwara, Coorg, the Andaman 10 and Nicobar Islands, and Aden. We give helow our reasons for holding that Aden should henceforth cease to be part of British As regards the States which have acceded to the Federation, the federal jurisdiction will extend to them only in respect of those matters which the Ruler of the State has agreed in his Instrument 15 of Accession to accept as federal.

157. The Settlement of Aden which comprises the town of Aden Aden. itself and certain immediately adjacent districts is at present administered by the Government of India as a Chief Commissioner's Responsibility for the hinterland of Aden, which is Province. 20 commonly known as the Aden Protectorate and which is not British territory, has since 1917 rested with His Majesty's Government, who have also since the same date been responsible for the military and political affairs of the Settlement. Under arrangements reached in 1926, an annual contribution, subject to a maximum of £150,000, 25 hut which amounts at the moment only to some £120,000, is made from Indian revenues to military and political expenditure on the Settlement and the Protectorate. The population of the Settlement is predominantly Arah, the Indian population, which is however of great commercial importance, numbering only about one seventh of 30 the whole.

158. Proposals for Indian constitutional reform inevitably Effect of necessitated consideration of the future position of Aden, and in constituparticular of the question whether the Settlement could satisfactorily proposals. be included in the new arrangements, or whether it would not be 35 preferable to transfer responsibility for its civil administration to His Majesty's Government, in whom military and political responsibility for the Settlement and complete responsibility for the affairs of the hinterland already vests. We have received strong representations against any alteration in the status of Aden from important 40 and influential Indian interests. On the other hand we have received representations in favour of transfer from the Arah population who appear to view with some apprehension the possibility that Aden may permanently remain a part of British India.

#### 1 White Paper, Proposals 5, 56-60.

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159. We recognise the natural reluctance of Indian public opinion Ita to sever a connection of almost a century's standing with an separation from area the development of which is largely due to Indian enterprise and where much Indian capital is engaged. But great 5 importance must also be attached to the interests and the feelings of But great Indu the Arah majority of the population of the Settlement. We are impressed apart from this hy the geographical remoteness of Aden from India; by the difficulties of merging it satisfactorily in a new Indian Federation; hy the impracticability of a complete divorce 10 between the civil administration of the Scttlement on the one hand and political and military control of the Settlement and Protectorate on the other; and by the anomaly of including in such new constitutional arrangements as may be approved for India an area predominantly Arah in population, already to some extent under 15 Imperial control, and in practice inseparable from the Aden Protectorate for which India has ceased to be in any way responsible.

The constitutionally anomalous position which would arise in regard to Defence, if the present arrangements were allowed to continue under the new constitution, would be particularly We are, moreover, inclined to see some force in 20 the argument that it is desirable on general grounds, given the importance of Aden from a strategic standpoint to the Empire in the East as a whole, and not merely to any individual unit that its control should vest in the Home Government After full consideration we are of opinion that the administration of the 25 Settlement of Aden should be transferred from the Government of India to His Majesty's Government not later than the date of the establishment of Federation In reaching this conclusion we have not ignored the apprehensions expressed by Indian interests connected with Aden as to the possible prejudicial effect of a transfer 30 We have, however, ascertained that His upon their position Majesty's Government are prepared in the event of transfer not merely to relieve India of her annual financial contribution, but to preserve a right of appeal in judicial cases to the Bomhay High Court, to maintain (in the absence of any radical change in present 35 economic circumstances) the existing policy of making Aden a free port, to leave nothing undone to keep the administration at its present standard, and to impose no additional taxation unless in their opinion such a course is quite inevitable. They are further prepared to agree that a proportion of Indian Service personnel shall 40 be retained for some years after the date of transfer, that no racial discrimination shall be permitted, and that British Indian subjects shall he allowed to enter the Protectorate under precisely the same conditions as any other British subjects I hese assurances ought, in our view, adequately to meet the apprehensions to which we have 45 referred above.

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# III -RESPONSIBILITY AT THE CENTRE

The Federal Centre

160 We come lastly to the proposals in the White Paper which relate to the Federal Government and Legislature 1 Much that we have said in connection with the Provinces applies equally to the Centre, but there are special problems connected with the latter for which there neither is nor can be any provincial counterpart. The Federal Government will be the point of contact between the Provinces and the Indian States which accode to the Federation, it will be the connecting link between all the constituent units as such, and there must exist at the Centre a residuary and ultimate responsibility for 10 the peace and tranquility of the whole of India The authority and functions of the Governor-General as the representative of the Crown assume in all these spheres a particular importance, especially in relation to Defence and External Affairs, and in connexion with the latter subjects the problems associated with a 15 dyarchical system have to he examined Wc propose to consider, first, the Federal Executive and the Federal Legislature and the relations between the two, and, secondly, the relations between the Federation and its constituent units, that is, the Provinces and those Indian States which have become members of the Federation.

# (1) THE FEDERAL EXECUTIVE

The present Executive in Indu. 161 The present executive authority in India, both in civil and in, military matters, is the Governor-General in Council. The members of the Governor-General's Executive Council, of whom not less than three must be persons who have been for at least ten years in the 25

service of the Crown in India, are appointed by the Crown, and their appointments are in practice for a term of five years, though there is no statutory limit. The Commander-in-Chief is ordinarily, though not necessarily, a member of the Council, and in that case has rank 30 and precedence next after the Governor-General himself. The present Council consists of six members (of whom three are Indians), in addition to the Governor-General and the Commander-in-Chief. The Governor-General presides at meetings of his Council, and the decision of the majority of those present prevails, though the Governor-35 General has a casting vote in the event of an equality of votes, and may, if any measure is proposed which in his judgment affects the safety, tranquillity or interests of British India, or any part thereof, over-rule the Council. The three members of the Council who are required to have been in the service of the Crown in India are invariably 40 selected from the Indian Civil Service; the post of Law Member has for some years past heen filled by an Indian lawyer, and that of Finance Member hy a person with financial experience from the <sup>2</sup> White Paper, Proposals 6-55.

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United Kingdom. An official is not qualified for election as a member of either Chamber of the Central Legislature, and if any non-official member of either Chamber accepts office under the Crown in India his seat is vacated, but every member of the Governor-General's 5 Council becomes an ex-officio member of one of the Chambers and has the right of attending and addressing the other, though he cannot be a member of both. The Executive Government is not responsible to the Indian Legislature, but only to the Secretary of State and thus to Parliament; and the Governor-General in Council, if satisfied that 10 any demand for supply which bas been refused by the Legislative Assembly is essential to the discharge of his responsibilities, can act as if it had been assented to, notwithstanding the refusal of the demand or any reduction in its amount by the Legislative Assembly. The Governor-General himself has also power in case of emergency 15 to authorise such expenditure as may in his opinion be necessary for the safety or tranquillity of British India, or any part thereof. These provisions secure the complete independence of the Executive, though the Legislature can and does exercise an influence upon policy in a marked and increasing degree.

162. The White Paper proposes that, as in the case of the Governor Executive in a Province, the executive power and authority of the Federation shall vest in the Governor-General as the representative of the King 1 This power and authority will be derived from the Constitution Act to be vested itself, but the Governor-General will also exercise such prerogative General 25 powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him. The former is to include the supreme command of the military, naval and air forces in India, but it is proposed that power should be reserved to His Majesty to appoint a Commander-in-Chief to exercise in relation to 30 those forces such powers and functions as may be assigned to him. In relation to a State which is a member of the Federation the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession. It is then proposed that there shall be a Council of 35 Ministers, chosen and summoned by the Governor-General and holding office during his pleasure, to aid and advise him in the exercise of the powers conferred on him by the Constitution Act other than his powers relating to (1) defence, external affairs and ecclesiastical affairs, (2) the administration of British Baluchistan,

and (3) matters left by the Act to the Governor-General's discretion. In respect of certain specified matters the Governor-General, like the Governor of a Province is declared to have a "special responsibility", and his Instrument of Instructions will direct him to be guided by the advice of his Ministers in the sphere in which they have the constitutional right to tender it, unless in his opinion one of his

White Paper Proposal 6
 White Paper, Proposal 13.
 White Paper, Proposals 5, 11 and 13

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special responsibilities is involved, in which case he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may he contrary to the advice which his Ministers have tendered <sup>1</sup>

Introduction of responsible government.

163 It will be seen that the White Paper proposals are the same (mutatis mutandis) for the Federal, as they are for the Provincial, Executive It is not therefore necessary for us to repeat what we have already said on the subject, and especially on the importance which will attach to the Governor-General's Instrument of Instruc-The Instrument will direct him to appoint as his Ministers those persons who will hest be in a position collectively to command the confidence of the Legislature, and this direction, taken in conjunction with the proposals which we have set out, is, as we have said elsewhere, the correct constitutional method of hringing into We observe that existence a system of responsible government Ministers are to advise the Governor-General in the exercise of the powers conferred on him by the Constitution Act (other than powers relating to the subjects which we have mentioned above), and we assume therefore that they will not be entitled to advise him in the exercise of any prerogative powers of the Crown which may be delegated to him, presumably in the Letters Patent constituting We are of opinion that this is a proper distinction to draw, and that Munsters should not, for example, have the right to advise on the exercise of such a prerogative of His Majesty as the grant of honours, if His Majesty should be pleased to delegate a limited power for that purpose There is no interference here with the principle of responsible government, for it is not proposed that His Majesty should be empowered to delegate any powers which are inconsistent with the Act.

Special questions in connection with the Federal Receive.

- 164 We pass to a consideration of some special questions which arise in connection with the Federal Executive, and they may conveniently be discussed under the following heads
  - (i) The nature of the Governor-General's special responsibilities.
    - (u) the Governor-General's selection of Munisters;
    - (iii) the Reserved Departments,
    - (iv) the Governor-General and the Federal Administration .
    - (v) the special powers of the Governor-General.

(1) Nature of the Governor-General's Special Responsibilities

165 The White Paper defines the matters in respect of which the Governor-General is declared to have a special responsibility in the following terms —(a) the prevention of any grave menace to the peace or tranquillity of India, or any part thereof, (b) the safguarding of the financial stability and credit of the Federation,

The Governor-General's "special responsibilities"

White Paper Proposal 21
White Paper, Proposal 14.

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(c) the safeguarding of the legitimate interests of minorities; (d) the securing to the members of Public Services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests; (e) the prevention of commercial discrimination; (f) the 5 protection of the rights of any Indian State; (g) any matter which affects the administration of any department under the direction and control of the Governor-General.

166. All that we have said on (a) in relation to the Governor of a Province applies with equal, if not greater, force in the case of the 10 Governor-General, and we have little to add to it. The Governor-General, as the authority in whom the exclusive responsibility for the defence of India is vested, must necessarily be free to act, according to his own judgment, where the peace or tranquillity of India, or any part of India, is threatened, even if he finds himself 15 thereby compelled to dissent from the advice tendered to him by his Ministers within their own sphere; but, since we assume that his Ministers will have equally at heart the preservation of peace and tranquillity, we bope that we may assume that differences of opinion between them and the Governor-General on this subject will 20 seldom, if ever, arise.

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167. Federal Ministers will under the White Paper proposals Responsibecome responsible for finance; but (to quote the Second Report of the Federal Structure Committee of 13th January, 1931) it is recognised to be "a fundamental condition of the success of the new Constitu-25 tion that no room should be left for doubts as to the ability of India to maintain her financial stability and credit, both at home and abroad," and that it is therefore necessary" to reserve to the Governor-General in regard to budgetary arrangements and borrowing such essential powers as would enable him to intervene if methods were 30 being pursued which would in his opinion seriously prejudice the credit of India in the money markets of the world." To this we might add that the grave responsibilities which attach to the Governor-General in the matter of defence afford a further and no less cogent reason. In our opinion, though the expression "budgetary arrange-35 ments and borrowing" indicates generally the sphere in which it is desirable that the Governor-General should have power, if necessary, to act, it would be unwise to attempt to define this special responsibility in more precise terms than are proposed in the White Paper. Any further directions for the guidance of the Governor-General 40 would find a more appropriate place in his Instrument of Instructions, as indeed the Joint Memorandum of the British-Indian Delegation suggests. The White Paper also proposes, rightly in our opinion, that the Governor-General should be empowered in his discretion, but after consultation with his Ministers, to appoint a financial 45 adviser to assist him in the discharge of this special responsibility.1 The British-Indian Delegation concur, provided it is made clear that

bility for safeguarding financial stability

#### 1 White Paper, Proposal 17.

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the financial adviser is not intended to interfere in the day to day administration of financial business; and they suggest indeed that it would be an advantage if be were designated the adviser to the Ministry as a whole as well as to the Governor-General. We think 5 that he must be regarded technically as the Governor-General's adviser, but his advice ought to be available to Ministers and we hope that they will freely consult him. We bave no doubt that the

Governor-General will always endeavour to secure the appointment of a person acceptable to his Ministers; for since we may assume that he will be a person selected not only by reason of his financial quali- 10 fications but also for his tact and commonsense, the value of his services would in our jndgment be no less diminished if he held himself aloof from Ministers than if he sought to interfere in matters outside his proper functions. We think that such an adviser, if the right selection is made, may prove of the greatest assistance both to 15 the Governor-General and to Ministers, and that the more successful he is in the performance of the duties attaching to his office, the less likelihood will there be of exercise by the Governor-General of any of his special powers.

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168. We have nothing to add to what we have already said with 20 regard to the special responsibilities specified under (c), (d) and e). As regards (f), "the protection of the rights of any Indian State," we have already expressed the view that this special responsibility only applies where there is a conflict between rights arising under the Constitution Act and those enjoyed by a State outside the 25 federal sphere. It may be necessary for the Governor-General to deal with such a conflict not only in his capacity as the executive head of the Federation but also in his capacity as the representative of the Crown in its relations with the States; but his special •responsibility must necessarily arise in the first capacity only. The 30 responsibility specified in (g) calls for no comment, since it is plain that the Governor-General must be free to exercise his own judgment in any matter which affects the administration of any of the reserved departments, even though it arises primarily within the ministerial sphere. 35

(ii) The Governor-General's Selection of Ministers

election of finistens, 169. [As in the case of the Provinces, it is proposed that federal Ministers must be, or become within a stated period, members of one or other Chamber of the Legislature.\(^1\) We have expressed the opinion that the Governor of a Province ought not to be thus restricted in his 40 choice of Ministers, and we think that in principle the choice of the Governor-General ought similarly to be unrestricted. The reasons which led us to the above conclusion in regard to the Provinces do not however apply with the same force, and we have no doubt that it would be very rarely, if at all, that the Governor-General would 45 find it necessary or desirable to appoint Ministers who are not

1 White Paper, Proposal 18.

#### Page 86

members of the Legislature or unlikely to become members within the prescribed period. Since also it is proposed that there shall be a small element nominated by the Governor-General in the Upper Chamber of the Legislature, the question is even less likely to arise in practice; but we think nevertheless that no distinction should be nade in this particular respect between the Federation and the Provinces.]

(iii) The Reserved Departments

170. The White Paper proposes that the Governor-General shall himself direct and control the administration of the Departments 10 of Defence, External Affairs and Ecclesiastical Affairs; <sup>1</sup> these matters will therefore remain outside the ministerial sphere, and the Governor-General's responsibility with respect to them will be to the Secretary of State and thus ultimately to Parliament. The Governor-General could not, it is plain, undertake in person so great 15

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an administrative burden and it is therefore proposed that he should be assisted by not more than three Counsellors who will be appointed by him and whose salaries and conditions of service will be prescribed by order in Council. Since also it is necessary that the Governor-20 General should have a spokesman in the Legislature on matters connected with the Reserved Departments each Counsellor will be ex-officio an additional member of both (hambers of the Legislature for all purposes, though without the right to vote, and we assume that there will be no restriction on his right to take part in any of the 25 debates in the Legislature if he desires to do so

# Defence

171 The Department of Defence is a cardinal Department, for it is The responsible for the defence of India in all its aspects, whether concerned with internal security or with protection from foreign on the Army 30 invasion The sober and impressive chapter on the Army in India which forms part of the Statutory Commission's survey makes it unnecessary for us to discuss in any detail the difficulties and complexities of this vital subject in its relation to India, and we do not desire either to add to or qualify their presentation of the 35 problem 3 Their investigation led them indeed to a conclusion which differs in its constitutional aspect from our own, but on the facts of the matter we find ourselves in complete agreement with them

Statutory

<sup>1</sup> Wints Paper, Proposal 11. It is also proposed that the Governor General shall himself direct and control the administration of British Baluchus tan (White Paper Proposal 5), but there will not be a Reserved Department of British Baluchustan which will be a Chief Commissioner a Province and which will be in no different position from other Chief Commissioners' Provinces, except that Ministers will not advise the Governor General in relation to its administration.

White Paper, Proposal 12 Report, Vol I, paras 111-126

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172 The commission, convinced that dyarchy in the Central The Com-Government was wholly madmissible, inquired whether any other plan was feasible which would provide adequately for the needs of Indian medation defence and offer at the same time an earlier prospect for further 5 constitutional advance; and they suggested as the only possible answer that the protection of the Indian frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature, but as a responsibility to be assumed by the Imperial Government 1 This 10 plan has not, we think, found advocates even among those who would be prepared to assent generally to the recommendation of the Commission, and it seems to us to avoid the difficulties of one kind of dyarchy by creating what is in substance, if not in form, another. We are unwilling for reasons which we have already given that the 15 problem of defence should for ever bar the way to any form of responsibility at the Centre, and we are prepared to accept the risks which we recognise to be implicit in a dyarchical system but it is an essential condition of the experiment that in the sphere of defence the Governor-General's responsibility should remain un-20 divided and unimpaired and that the Department of Defence should be under his exclusive direction and control It should be remem- bered also that it is through this agency that the obligation will be discharged which the Crown has assumed for the protection, whether externally or internally, of the States Responsible British-India 25 opinion does not deny the necessity for the reservation, though the

Joint Memorandum of the British-India Delegations seeks to add certain qualifications, to which we shall refer later, and we proceed therefore to a consideration of some of the more important questions which it involves

173 No department of Government can be completely self-30 contained, and a Department of Defence is no exception to the rule Its administration does not indeed normally impinge upon the work of other Departments, save in time of war or other grave emergency. but its policy and plans may be greatly influenced by theirs, and by the knowledge that it is able to rely upon their co operation at 35 moments of crisis It is vital, therefore, that where defence policy is concerned the Department should be able to secure that its views prevail in the event of a difference of opinion. The special responsibility which it is proposed that the Governor General shall have in respect of any matter affecting the administration of the Departments 40 under his direct control will enable him in the last resort to secure that action is not taken in the ministerial sphere which might conflict with defence policy, and he will also be able to avail himself of the power which the Federal Government will possess to give directions as to the manner in which the executive authority in the 45 Provinces is to be exercised in relation to any matter affecting the administration of a federal subject, since Defence is none the less a

<sup>2</sup> Report, Vol II, paras 195-215

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federal subject because reserved. Thus the maintenance of communications, especially on mobilisation, is a vital military necessity, and the Governor-General must have power in case of need to issue directions to the Railway Authority, or to require the Minister in charge of communications to take such action as the Governor-General may deem advisable. In the provincial sphere questions may arise with regard to the control of lands, buildings or equipment maintained or required by the Department, or with regard to such matters as facilities for manœuvres or the efficiency and well-being of defence personnel stationed in provincial areas. In all matters of 10 this kind where there is a difference of opinion with other authorities, the final responsibility for a decision, if defence policy is concerned, must rest with the Governor-General and his views must prevail

174 It may be assumed that in practice the willing co-operation of the other departments of Government-Federal or Provincial-will 15 render unnecessary any recourse to these special powers, and we should view with dismay the prospects of any new Constitution, if the relations between the ministerial and the reserved Departments were conducted in an atmosphere of jealousy or antagonism influence of the Governor-General will no doubt always be exerted 20 to secure co-ordination and harmony, but it may well be that some permanent co-ordinating machinery will be desirable. The British-India Joint Memorandum suggests a statutory Committee of Indian Defence which in other respects would be modelled on the Committee of Imperial Defence, but we are not sure that its authors fully 25 appreciate the position and functions of the latter, since it is not a statutory body and its value is perhaps increased by that very fact We are disposed to think that a body with statutory powers and duties might embarrass the Governor General and even be tempted to encroach upon his functions A consultative body established at the 30 Governor-General's discretion would not be open to that criticism and might, we think, have many advantages.

175. The Joint Memorandum observes that, since the Governor-General in Council exercises superintendence, direction and control 5 over the military as well as the civil government in India, the Delegation reservation of the Department of Defence to the Governor-General will have the effect of depriving Ministers of the influence over Army policy which at the present time Indian Members of the Governor-General's Council are able to exert. It urges therefore (1) that the O Governor-General's Counsellor in charge of the Department of Defence should always be a non-official Indian, and preferably an elected member of the Legislature or a representative of one of the States; (2) that the control now exercised by the Finance Member and the Finance Department should be continued; and (3) that all questions 5 relating to army policy and the annual army budget should be considered by the entire Ministry, including both Ministers and Counsellors; though it is admitted that in cases of difference the decision of the Governor-General must prevail. As to the first point,

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we do not think that the Governor-General's choice ought to be fettered in any way, and he must be free to select the man best fitted in his opinion for the post. As to the second, we understand that the Military Finance and the Military Accounts Departments are at the present time 5 subordinate to the Finance Department of the Government of India, and not to the Army Department. It seems to us a necessary corollary of the reservation of defence that both of them should be brought under the Department of Defence, since the responsibility for the expenditure which they supervise can only be that of the Governor-General. But the transfer would not preclude an arrangement whereby the Federal Department of Finance is kept in close touch General. with the work of both these branches and we do not doubt that some such arrangement ought to be made. As to the third point, we observe a proposal in the White Paper that the Governor-General's 15 Instrument of Instructions should direct him to consult the Federal Ministers before the army budget is laid before the Legislature; and so long as nothing is done to blur the responsibility of the Governor-General it seems to us not only desirable in principle, but inevitable in practice, that the Federal Ministry, and in particular, the Finance 20 Minister, should be brought into consultation before the proposals for defence expenditure are finally settled.

The Indianica

176. We pass to the vexed question of Indianization. Governor-General's Instrument of Instructions will, we understand, formally recognise the fact that the defence of India must to an 25 increasing extent be the concern of the Indian people, and not of the United Kingdom alone. With this general proposition we are in entire agreement, and we have every sympathy with what the Statutory Commission rightly call the natural and legitimate aspirations of India. But Indianization is a problem which admits of no facile solution, 30 and least of all one based upon the automatic application of a timetable; and if we should seem to emphasize its difficulties, it is because we are anxious that Indian political leaders should be realists in this matter, and not because it is either our desire or our intention to derogate from or to evade the pledges which have been given by 35 successive Governments in this country.

177. It is sometimes said that so long as the officer ranks of the The Indian Army are not fully Indianized complete self-government must difficulties be indefinitely deferred. We do not regard that view as self-evident; and indeed the problem of Indianization does not appear to us to be 10 essentially related to the constitutional issues with which we are

concerned. Since however it has been brought before us, we think it wise to repeat the conclusions of the Statutory Commission that "the issues involved are too vital, and the practical difficulties too great, to justify a precipitate embarkation on a wholesale process of substituting Indian for British personnel in the Indian Army." 45

White Paper, Introd., para. 23. Ibid.
Report, Vol. II, para. 196.

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A further difficulty arises from the difference (in a military sense) between the martial and the other races of India. We are well aware that this difference is alleged to have no existence in fact or at least to have been exaggerated for political purposes; but no unprejudiced person can deny that it is there, and that it is beyond the power of Parliament to alter it. There are some things which even an Act of Parliament cannot do. It is subdued to what it works in, and spiritual values are heyond its scope; and something more than a section in a statute is required to eliminate racial differences or to hreathe life into the elements which go to the making 10 of a national army. Parliament can provide the conditions in which the creation of a homogeneous Indian nation may become possible; but the act of creation must be the work of Indian hands.

178. We think it right to mention these things because of the suggestion put forward in the British-India Joint Memorandum that 15 there should be a definite programme of Indianization with reference to a time limit of 20 or 25 years, and that one of the primary duties of an Indian Army Counsellor should be the provision and training of Indian officers for the programme of Indianization. It is in our judgment impossible to include in the Constitution Act or in 20 any other statute a provision for the complete Indianization of the Army within a specified period of time. The scheme introduced in 1931 provides for the Indianization of the equivalent of one Cavalry Brigade and one Infantry Division complete with all arms and ancillary services; and we are assured that it has been initiated 25 by the military authorities in India with the fullest sense of their responsibility in the matter and that further developments will depend upon the success of the experiment. If the experiment succeeds, the process will be extended and developed, and Indians can rely on all the sympathy and assistance which we are able to 30 give them for the purpose of creating an army of their own. endorse the measured words of the Statutory Commission: "Neither British politician or Indian politician can wisely decide such matters without special knowedge and expert advice. We are only concerned here to convey a double warning—a warning on the one 35 hand that Britain cannot indefinitely treat the present military organization of India as sacrosanct and unalterable, but must make an active endeavour to search for such adjustments as might be possible; and a warning on the other hand that Indian statesmen can help to modify the existing arrangement in the direction of 40 self-government only if they too will co-operate by facing the hard facts and hy remembering that those who set them out for further consideration are not gloating over obstacles, but are offering the help of friends to Indian aspirations."1

179. It will be more convenient to consider certain questions which 45 have been raised in connection with the rights of Defence personnel in that part of our Report in which we deal with the rights of the

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Services generally The question of the future recruitment for the Indian Medical Service, which has an important military bearing. is discussed in the same place, and it is unnecessary therefore to do more than mention it here

180 The White Paper proposals have been thought to contemplate The the possible abolition of the office of Commander in Chief in Chief India We do not so read them and we are assured that no such intention is in the mind of His Majesty's Government.

# External Affairs

181. The Department of External Affairs is in our opinion rightly External reserved to the Governor General, if only because of the intimate connection between foreign policy and defence. At the present time the Foreign Department of which the Governor-General himself holds the portfolio, is only concerned with the relations between the 15 Government of India on the one hand and foreign countries on the

other and not with the relations between the Government of India and the Dominions, and we are informed that the expression "External Affairs" is not intended to include the latter, a decision with which we concur It was uiged before us that the making

20 of commercial or trade agreements with foreign countries was essentially a matter for which the future Minister for Commerce should be responsible rather than the Governor-General the United Kingdom, however, all agreements with foreign countries are made through the Foreign Office. Any other arrangement

25 would lead to grave inconvenience, but when a trade or com-mercial agreement is negotiated, the Foreign Office consult and co-operate with the Board of Trade, whose officials necessarily take part in any discussions which precede the agreement. We assume that similar arrangements will be adopted in India, and that the 30 Department of External Affairs will maintain a close contact with the Department of Trade or Commerce, but we are clear that agreements of any kind with a foreign country must be made by the Governor-

General, even if on the ments of a trade or commercial issue ha is guided by the advice of the appropriate Minister

Ecclesiastical Affairs

182 The origin of the Ecclesiastical Department is to be found in Locionthe obligation imposed by the Charters of the East India Company to provide chaplains on their ships and at their stations, and since 1858, when the rights and obligations of the East India Company 40 finally passed to the Crown, the Government of India have rightly regarded it as their duty to provide for the spiritual needs of British troops stationed in India and, so far as circumstances admit of the European members of the Civil Services The Secretary of State in Council has under his general powers established and maintained 45 for this purpose a cadre of official chaplains appointed by himself and

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has authorised grants-in-aid out of Indian revenues for the maintenance of churches and of a certain number of non-official chaplains, the present annual expenditure of the Department being approximately 40 lakhs Since the Indian Church Act, 1927, and the Indian Church 5 Measure of the same year, by virtue of which the Church in India became an autonomous body, Indian Bishops are no longer appointed by the Crown.

183 Under the proposals in the White Paper the powers of the Secretary of State will pass to the Federal Government, but will be exercised under the personal direction of the 10 Governor-General, subject (as in the case of the other Reserved Departments) to the general control of the Secretary of State It is clear that any sudden or unreasonable curtailment of Government assistance might gravely embarrass the new autonomous Indian Church hut obviously the latter must in course 15 of time come to depend less and less upon Government assistance, whether in the form of the provision of official chaplains or of grants in aid for the maintenance of non-official chaplains or churches, and we understand that the policy of the Government of India is gradually to reduce ecclesiastical expenditure with the ultimate 20 intention of restricting it to provision for the spiritual needs of British troops and, within reasonable limits, of the civil official population The expenditure of the Department will not therefore rise above the present figure and may fall below it as time goes on We approve the arrangement proposed, but we think that in the circumstances 25 the Constitution Act should specify a maximum figure above which the annual appropriation for ecclesiastical expenditure cannot go It appears that the whole of the expenditure in respect of official chaplains is now classified as civil expenditure, although a large proportion of the maintained churches and the services of over 90 per 30 cent of the official chaplains at present employed minister primarily to the spiritual needs of the Army and it is a matter for considera-tion whether ecclesiastical expenditure for Army purposes should not be under the control of the Department of Defence We understand that this question is now under examination by the Government 35 of India

# (1v) The Governor-General and the Federal Administration

184 We do not think it necessary to repeat the observations which we have already made on this subject in connexion with the Provinces, for they are equally applicable to the relations between the Governor-40 General and the Federal Administration. But the existence of the Reserved Departments and the Governor-General's Counsellors introduces an additional factor. The Federal Government will be a dyarchical, and not a unitary, government, the Governor-General's Ministers having the constitutional right to tender advice to him 45 on the administration of a part only of the affairs of the Federation,

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while the administration of the other part remains the exclusive responsibility of the Governor-General himself. In these circumstances it is clear that the Governor-General's Counsellors, who will be responsible to the Governor-General alone and will share none of the responsibility of the Federal Ministers to the Federal Legislature, cannot be members of the Council of Ministers. It has indeed been suggested that, for the purpose of securing a greater unity in the Government, the Counsellors ought to form part of the Ministry, entering and leaving office with them, whatever the political complexion of the Ministry may be. An artificial arrangement of this 10 kind, completely divorced from the realities of the situation, is in our opinion quite inadmissible. The Counsellors could not by a simulated resignation diminish their responsibility to the Governor-General, nor would the Government become any more unitary than it was before. It is no doubt true that legal fictions which 15 mask a change of substance by preserving the outward form have

often proved a valuable aid to constitutional development; but a fiction whereby the form but not the substance is altered can serve no useful purpose. We hope nevertheless that the Counsellors, even 20 if they cannot share the responsibility of Ministers, will be freely admitted to their deliberations. It would indeed be difficult, if not impossible, to conduct the administration of the Department of Defence in complete aloofness from other departments of government; and the maintenance of close and friendly relations with 25 Departments under the control of Ministers can only increase its efficiency. We understand the intention of His Majesty's Government to be that the principle of joint deliberation shall be recognised and encouraged by the Governor-General's Instrument of Instructions. We warmly approve the principle, and we think that it will prove a 30 valuable addition to the machinery of government without derogating in any way from the personal responsibility of the Governor-General for the administration of the Reserved Departments.

185. We recognise the difficulty which necessarily attaches to a Misspersdyarchical system, and that for its successful working, tact and 35 sympathy of no common order will be required on both sides. The and White Paper states that the proposals which it contains "proceed on Commeliers. the basic assumption that every endeavour will be made by those respensible for working the Constitution to approach the administrative problems which will present themselves in the spirit of partners in a 40 common enterprise." If this assumption proves, as we hope, to be well-founded, many difficulties will disappear. Some at least of them appear to arise from a misunderstanding of the White Paper. Thus we were informed that, though the normal number of the Governor-General's Counsellors would probably be two, it was thought advisable 45 to take power to appoint a third in case of need; but according to the Joint Memorandum of the British-India Delegation, fears have been expressed in India that, if a third Counsellor is appointed and "is

1 White Paper, Introd., para. 28.

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placed in charge of the special responsibilities of the Governor-General," he may develop into what is described as "a super-Minister, whose activities must necessarily take the form of interference with the work of the responsible Ministers." It is impossible 5 to forecast with any accuracy the volume of work involved in the Governor-General's administrative responsibilities, and it may well be that the appointment of a third Counsellor will be found necessary; but, if we may respectfully say so, the notion that there is a danger of his becoming a 4 super-Minister " seems to us altogether fantastic. 10 To speak of a Counsellor being "placed in charge of the special responsibilities of the Governor-General" is wholly to misapprehend the conception of the special responsibilities embodied in the White Paper, which do not set apart a governmental or departmental sphere of action from which Ministers are excluded, or even one in 15 which the Governor-General has concurrent powers with his Ministers. We do not, as we have said elsewhere, anticipate that the occassions on which the Governor-General or a Governor will find himself compelled in the discharge of his special responsibilities to dissent from ministerial advice tendered to him are likely to be numerous; and 10 the Governor-General and his Counsellors, even if the latter had the power, will not have such ample leisure at their disposal as to be tempted to utilise it for the purpose of interfering with the day to day administration business of Ministers.

186 The Governor-General, even more than the provincial Governors, will require an adequate staff with an officer of high standing 25 at its head. Whether one of the Counsellors will fill this position it is unnecessary for us to consider, for the question is administrative rather than constitutional, but it is of exceptional importance that the Governor-General should be well served and we do not doubt that this matter has engaged, and will continue to engage, the carnest 30 attention of His Majesty's Government

# (v) The Governor-General's Special Powers

187 The special powers, legislative and financial, of the Governor-General as described in the White Paper do not differ (mutains mutandis) from those which it is proposed to give to the Governor 35 of a Province. It is therefore sufficient to refer to what we have already said upon the subject in an earlier part of this Report, and we have nothing to add to it here.

# (2) RELATIONS BETWEEN THE FFDERAL EXECUTIVE AND LEGISLATURE

188 We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province, and when we examine the relations between the Federal Executive and Legislature, it is plain that many of the same questions arise. But a further complication is introduced into the Federal 45 Executive, for it is pioposed that the Governor-General should, in

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selecting the Ministers who are likely to command the confidence of the Legislature, include "so far as possible" not only members of important minority communities but also representatives of the States which accede to the Federation 1 We have already stated our opinion that the acceptance of this principle, inevitable though we recognise it to 5 be, is likely to retard the growth of political parties in the true sense, and it is perhaps even more likely to do so at the Centre than in the Provinces, since we can scarcely doubt that State representation will always be regarded by the States themselves as a necessary and essential element in every administration The Federal Legislature, 10 though intended to be representative of India as a whole, will itself be largely based upon a system of communal representation, and in these circumstances we do not overlook the possibility that in place of an Executive which propounds, and a Legislature which deliberates upon, a national policy, there may be found two bodies 15 each tending to become, in a classic phrase, "a congress of ambassadors from different and hostile interests, which interests each must maintain as an advocate and agent against other agents and advocates"

augments, or at least does not diminish, the complexities of the situation. It is unnecessary to repeat all that the Statutory Commission have said on the working of dyarchy in the Provinces, but we may usefully quote one passage from their Report. "The practical difficulty in the way of achieving the objective of dyarchy and of 25 obtaining a clear demarcation of responsibility arises not so much in the inner counsels of government as in the eves of the Legislature, the electorate and the public. Provincial Legislatures were by the nature of the Constitution set the difficult task of discharging two different functions at the same time. In the one sphere, they were 30 to exercise control over policy, in the other, while free to criticise and vote or withhold supply, they were to have no responsibility.

The inherent difficulty of keeping this distinction in mind has been intensified by the circumstances under which the Councils have 35 worked to such an extent that perhaps the most important feature of the working of dyarchy in the Provincial Councils, when looked at from the constitutional aspect, is the marked tendency of the Councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, 40 to forget the extent of the opportunities of the Legislatures on the transferred side, and to magnify their functions in the reserved field." To this we may add the Commission's references to the importance (not always, we think, fully realised) of the part played by the official bloc in making the present system workable, by the 45 assurance which it has given to the responsible Ministers of at least one body of supporters on whom they could always rely. "There

<sup>1</sup> White Paper, Proposal 14. <sup>2</sup> Report, Vol. I, parat, 282, 233.

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is no Province", the Commission say, "in which the official bloc has not at some time or other been of decisive value to Ministers, and in some Provinces there has never at any time been a sufficiently large or cohesive ministerial party to enable Ministers to ignore the 5 assistance of their official supporters." These facts have had an important influence on the working of the dyarchical constitution.

190. The difficulties to which we have drawn attention are no Unifying doubt formidable, and we do not seek to minimise them; but we are far from regarding them as fatal. As regards the composite nature of 10 the Executive, it is perhaps worth observing that few, if any, Federations have in practice found it possible to constitute an Executive into which an element of representation does not in some sense enter. The Swiss Constitution, by providing that not more than one member of the Federal Council may be chosen from one canton, secures the 15 direct representation at any given time of at least seven cantons; and we doubt whether a Canadian or Australian Prime Minister, or a German Chancellor before recent events in Germany, could ever form a Ministry in which claims to representation by some at least of the constituent units of the Federation were disregarded. It will be 20 said that, at any rate in the case of Canada and Australia, the different elements in the Ministry are selected primarily because they are members of the majority party in the Legislature, and only secondarily because they represent other interests which a Prime Minister cannot afford to neglect. This is no doubt true, and we do 25 not seek to push the analogy too far; but we think that the formation of all Federal Executives will always be found to involve considerations which, happily for himself, the Prime Minister of a unitary Government can leave altogether out of account. Next, it is to be observed that the functions of the Federal Executive under the 30 White Paper scheme are necessarily more limited in scope than under the existing constitution, and relate essentially to matters of all-India interest. Tariffs, currency and transport are national, not communal, questions; and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic 35 rather than a communal origin. There will, therefore, be centripetal as well as centrifugal forces; and it seems to us indeed conceivable that, until the advent of a new and hitherto unknown alignment of parties, a central Executive such as we have described may even come to function, as we believe that the Executive of the Swiss 40 Confederation functions, as a kind of business committee of the Legislature.

191 Of the difficulties presented by the system of dyarchy we desire to speak frankly. We do not doubt that in what the Statutory Commission call "the inner counsels of government" they can readily be solved; and the moderating and unifying influence which 45 the Governor-General, both as the head of the Executive and as representative in India of the Crown, will be in a position to exercise

1 Report, Vol I, para 229.

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must always be a powerful factor. But "the task of discharging two different functions at the same time "may prove no less difficult for the Federal, than it has been for a Provincial, Legislature, and a great responsibility will rest upon the Federal Legislature, if the scheme is to prove workable in practice, without (as we hope) the intervention of the Governor-General or recourse to any of his special powers. In the reserved sphere the Legislature will have the power to criticize, but not to thwart, the Executive, to influence, but not to determine, policy, and since in this sphere Defence is infinitely the most important subject, the crucial question is whether the 10 Legislature will be prepared, where Defence is concerned, to adopt a responsible and not an irresponsible attitude. We cannot deny that it may be tempted (in the phrase of the Statutory Commission) "to magnify its functions in the reserved field" The military hudget and the progress of Indianization are matters on which strong views 15 are held, and it is not to be supposed that under a dyarchical system they will cease to be of interest to legislators. But it is upon the clear demarcation of responsibility that the White Paper scheme depends, and we must state as emphatically as we can that its maintenance is one of the essential conditions of responsible government 20 at the Centre.

192. It will be said that the practical working of dyarchy in the Provinces as it has been depicted by the Statutory Commission is scarcely a recommendation for its introduction at the Centre, and that the Governor-General's Counsellors in any conflict with the 25 Legislature may find themselves in a difficult position without the support of an official bloc. We do not dispute the force of this argument, but we have given reasons elsewhere for holding that the administrative difficulties of dyarchy at the Centre are not comparable with those which it has presented in the Provinces, where the inter- 30 relation of the two branches of the government makes it impossible in practice to divide the administration of provincial business into mutually exclusive compartments The same District Officer may, for example, have to give effect to directions from a Minister and an Executive Councillor, each in his own sphere, but the Governor- 35 General s Reserved Departments are administratively separate and self-contained, and we are satisfied that the practical difficulties which have been experienced in the Provinces are far less likely to arise Secondly, we repeat that our recommendation in favour of responsibility at the Centre is conditional on the accession to the Federation 40 of the Indian States In all matters relating to Defence their interest is a powerful and reassuring factor. Dyarchy could not for many years to come be an adequate solution of the problem of defence with an exclusively British-India Centre. With the accession of the Indian States it becomes at once an all-India problem, and the 45 presence in the Federal Legislature of representatives of the States will afford a guarantee, if any he required, that these grave matters will be weighed and considered with a full appreciation of the issues at stake.

193 We draw attention in conclusion to an argument which has Responsibility at the the grant of responsible government at the Centre been frequently urged that the grant of responsible government at the (entre is likely to be prejudicial to the interests of the masses of and the We are unable to appreciate the force of this argument when the mass it is used as it commonly is by those who are willing to concede responsible government to an autonomous Province A cursory glance at the list of subjects which comprise the exclusively provincial field will show that the activities of government which most closely affect the interests of the masses fall within the provincial sphere It is true that there are also subjects in the federal held which might touch those interests Some of these relate to social matters in which, for reasons which we have already given measures of reform seem to us beyond the power of any but a responsible Indian Government to undertake Of the others, tariffs are pernaps the most important, but in our opinion it may well prove that the interests of the consumer will be more fully weighed and safeguarded than they have sometimes been in the past by a Legislature in which agricultural interests will be strongly reinforced by the representatives of the Indian States

# (3) THE FEDERAL LLGISLATURE

# Composition of, and election to the Legislature

194 There is no part of the subject of our enquiry which has Difficulty of seemed to us to present greater difficulties than the question of the method of election to a Central Legislature for India It is one on which there has always been a marked difference of opinion, and we recall that the Joint Scleet Committee which considered the Government of India Bill in 1919 did not accept the recommendations of the Southborough Committee which had been embodied in the Bill, and that there is a similar divergence between the recommendations of the Statutory Commission and the proposals in the White Paper In these circumstances our task has been an anxious one and we have only arrived at our conclusions after a careful and prolonged examination of the matter in all its aspects

195 The White Paper proposes that the Federal Legislature shall Compounton consist of the King represented by the Governor General, and two Chambers, to be styled the Council of State and the House of The Council of State is to consist of not more than Assembly Assembly 260 members, of whom 150 will be representatives of British India not more than 100 will be appointed by the Rulers of States who ) accede to the Tederation and not more than 10 will be nominated by the Governor-General in his discretion The Governor-General s Counsellors, who will be ex officio members of both Chambers for all purposes except the right of voting are not included in the above figures, and it is provided that the members to be nominated by the Governor-General shall not be officials The House of Assembly will consist of not more than 375 members, of whom 250

Federal proposed in White

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will be representatives of British India, and not more than 125 will be appointed by the Rulers of States who have acceded to the Federation 1

196 The representatives of British India in the Council of State Method of 5 will to the number of 136 be elected by the members of the Provincial Council of Legislatures, by the method of the single transferable vote Indian State Christian, Anglo Indian and European members of the Provincial Legislatures will not be entitled to vote for these representatives,

such as commerce, industry, landlords and labour, would not obtain adequate representation, and secondly, because though the single transferable vote would in all probability make it possible for the communities to obtain substantially the same representation 30 as under the White Paper proposal, the minority communities would regard it with suspicion, and we think it essential that nothing should be done which would afford opportunities for reopening the communal question. We accordingly recommend that the Hindu, Muhammadan, and Sikh seats should be filled 35 by the representatives of those communities in the Piovincial Assembles voting separately for a prescribed number of communal seats, and that within the Hindu group special arrangements With regard to the should be made for the Depressed Classes Indian Christians and Europeans, their representation in the 40 Provincial Assemblies is so small that this plan would not be suitable and we think, therefore, that it will be necessary that they should vote in an electoral college formed by their representatives in all the Provincial Assemblies

203 The White Paper proposes that the members of the Council of 45 State should be elected by the members of the Provincial Legislatures, including members of the Provincial Upper Chambers where

1 Supra para 129

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the Legislature is bicameral The method of election proposed is that of the single transferable vote, a communal distribution of seats being thereby avoided, but special arrangements are contemplated for Europeans, Anglo Indians and Indian Christians, which would not otherwise be in a position to secure adequate representation 5 No provision is made for representation in the Council of State of special interests. We accept these proposals in principle but if, as we recommend, the Provincial Assemblies are to elect to the Federal House Assembly, it will clearly be necessary to find different electoral colleges for the Council of State It seems to us that the only alter- 10 native electoral college is the Provincial Legislative Council in those Provinces where a Legislative Council exists, and in the unicameral Provinces we recommend that an ad hoc electoral college should be constituted of persons elected by an electorate broadly corresponding to the electorate for the Legislative Councils in bicameral Provinces, 15 the communal distribution of seats in this electoral college corre sponding to that in the Provincial Assemblies

204 The White Paper proposes that each Council of State shall continue for seven years and each Federal House of Assembly for five years, power being reserved to the Governor General in his discretion 20 to dissolve both Houses either separately or simultaneously. We prefer a Council of State constituted on a more permanent basis, and accordingly recommend that it should not be subject to dissolution, that its members should be elected for a period of nine years, and that one third should retire and be replaced at the end of every third 25 year (special arrangements would in that event be required for the first nine-year period following on its first constitution)

205 The numbers proposed in the White Paper for the two Federal Houses have been the subject of criticism, and we see many advantages in Houses of a smaller size, especially in view of the 30 proposals to which we refer hereafter for Joint Sessions of both Houses. We are however convinced, after a careful examination of the whole question, that the balance of convenience is against

any reduction of the numbers proposed in the White Paper. In the 35 first place, the size of the Houses will regulate the number of seats available for the representation of the Princes, and unless this representation is generally acceptable to the Princes as a whole, they may be unwilling to federate and the first condition precedent to the establishment of the Federation would not he fulfilled.

40 Certain of the larger States have, it is true, expressed a preference for substantially smaller Houses, but we are satisfied that the general body of States would he unwilling to accept any arrangement which assigned to the States less than 100 seats in the Federal There is general agreement that the States should Upper House.

45 have a 40 per cent. representation in this House, which implies a House of about 250 members, as the White Paper proposes. reasons which we discuss in connexion with the relative powers of the two Houses, we think it important also that their proportionate

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strength should he as in the White Paper. It follows therefore that since the Upper House is to have a strength of about 250, the Lower House cannot be reduced below the White Paper figure. There are also weighty reasons which affect British India for adhering to the 5 White Paper proposals as regards numbers. If the size of the Council of State were materially reduced and if, as we have recommended, one-third of its membership is replaced every three years, the number of members whom provincial electoral colleges would be called upon to choose at any given election would be too 10 small for the method of the single transferable vote to produce an equitable result from the point of view of minorities; and we should greatly regret the introduction of a communal hasis for the Federal Upper House. There is another consideration affecting the Federal House of Assembly. It would be difficult, if the size of this 15 House were reduced, to make any proportionate reduction in the number of scats assigned to special interests, since this would in several instances deprive them of seats which they have in the existing Legislative Assembly. These special interest scats, apart from those assigned to European commerce and industry, would 20 in practice be almost entirely occupied by members of the Hindu community. We think it important that the Muhammadan community should have secured to it, as the White Paper proposes, one-third of all the British-India seats; but if the number of the special interest seats is to remain undisturbed, the application to a 25 substantially smaller House of the undertaking given to the Muhammadans would result in a disproportionate number of the ordinary (non-special) seats being allocated to the Muhammadans. The combined effect of the considerations mentioned in this and the preceding paragraph has led us to the conclusion, notwithstanding 30 all the arguments which can be urged on the other side, that the size of the two Houses should stand as in the White Paper.

206. We have set out in the Appendix (II) to this part of our Report! Details of a description of the scheme of indirect election which we recommend out in for the Council of State and for the Federal House of Assembly, Appendix so far as the British-India representatives are concerned. The details of the scheme are necessarily complex, and we think that they can be better appreciated if dealt with in this manner. It may well ' be that on further examination parts of the scheme will be found to require readjustment or revision in matters of detail, and we do not 40 desire that our recommendations should be taken as precluding a further expert examination of it.

207. The representatives of the States will be appointed by the Rulers of the States concerned. A difficult question arises, however, with regard to the allocation among nearly six hundred States of the 100 and 125 seats available for the States as a whole in the Council of 45 State and Federal House of Assembly respectively. The White

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Paper does not deal with this matter, which we are informed has been under discussion between the Governor-General and the Princes for some time past, and we have been furnished with details of a scheme which the Governor-General has propounded as a basis for discussion. This scheme is set out in the Appendix (III) to this part 5 of our Report.1 It proceeds on the principle that the allocation of seats among the States should, in the case of the Council of State, take account of the relative rank and importance of the State as indicated by the dynastic salute and other factors, and in the case of the House of Assembly, should be based in the main on population. 10 So far as we are able to judge, a scheme on these lines would be a reasonable one, and would be appropriate to the new constitutional arrangements which we contemplate. We observe that it makes provision for the pooling by groups of States of the representation allotted to them individually, with the object of securing a form of 15 representation more suited to their common interests, and for giving legal effect to any arrangements so made. We see many advantages in a plan of this kind, if it should prove practicable.

208. The scheme makes provision for the representation of the whole of the States of India. It may well be however that not all the 20 States will accede, at any rate in the early years of the Federation; nor could States under a minority administration in any event accede until the Ruler had taken over the government of the State. The White Paper proposes that any vacancies arising from non-accession should for the time being remain unfilled. The States have urged 25 that this arrangement would operate to the prejudice of those States which have in fact acceded in relation to the British-India portion of the Legislature, and we are of opinion that there is substance in the objection. We do not think that it would be reasonable to allocate to the States which accede the whole representation of 30 those who are holding back; but we recommend that the representatives of the States which have acceded should be empowered to elect additional representatives in both Houses up to half the number of States' seats (including those States whose Rulers are minors) which remain unfilled. We think, however, that this 35 arrangement should cease to operate when as a result of accessions 90 per cent. of the seats allocated to the States are filled, and in any event at the expiration of 20 years from the establishment of the Federation.

209. A suggestion was brought to our notice that provision should 40 be made in the Constitution Act for the vacation of his seat hy a member of the Legislature appointed by the Ruler of a State if called upon to do so by notice in writing from the Ruler. We could not accept this suggestion. We conceive that a State representative, although he is nominated and not elected, holds his seat hy precisely 45 the same tenure as an elected representative from British India, and no distinction should be made between the two.

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## Powers of the Federal Legislature

210. The observations which we have made in connexion with Federal the powers of the Provincial Legislatures apply generally, mutatis Legislature, mutandis, to the Federal Legislature, and we are of opinion that the 5 same general restrictions on the legislative power should apply in both cases. We note that in addition to the legislative proposals which in a Province require the Governor's previous sanction, and will, in the Federal Legislature, require the sanction of the Governor-General, legislative proposals affecting any Reserved Department, 10 the coinage and currency of the Federation, or the powers and duties of the Reserve Bank in relation to the management of currency and exchange, will also require the Governor-General's previous sanction.1 We have no comment to make on the first of these, which is a necessary corollary on the reservation to the Governor-General of 15 the control over certain Departments; and we deal with the second and third elsewhere in connexion with the Reserve Bank.

211. It is proposed (and we concur) that the Governor-General's The powers with regard to assent to, reservation of, or withholding assent General's from, any Bills presented to him should be the same as in the case 20 of the Governor of a Province, except that the Governor-General reserves a Bill for the signification of His Majesty's pleasure, whereas a Governor reserves it for the consideration of the Governor-General,2

212. It is proposed that the powers of the Federal Legislature 25 shall not extend to the Chief Commissioner's Province of British Baluchistan. The legislation required is to be obtained either by Regulations made by the Governor-General at his discretion or by the application by him to the Province, with or without modification, of any enactment of the Federal Legislature, an arrangement which 30 we are satisfied is the most appropriate which could be devised for an area of this character.3

### Procedure in the Federal Legislature

213. On this subject also it is unnecessary to repeat what we have Procedure already said in connexion with the Provincial Legislatures. We 35 draw attention, however, to three heads of expenditure which it is Legislature. proposed should not be submitted to the vote of the Legislature, and which necessarily have no counterpart in the Provinces. These are (1) expenditure for a Reserved Department; (2) expenditure for the discharge of the functions of the Crown in and arising out of 40 its relations with the Rulers of Indian States; and (3) expenditure for the discharge of the duties imposed by the Constitution Act

White Paper, Proposal 119.
White Paper, Proposal 39.
White Paper, Proposal 58.
White Paper, Proposal 49.

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on the Secretary of State. The inclusion of the first necessarily follows from the reservation of administration and control to the Governor-General. The second would include the expenses of the Political Department and other matters connected with the rights 5 and obligations of Paramount Power. We understand the third to refer to such matters as expenditure in connexion with the Secretary of State's establishment in London, liabilities incurred by . him on contracts or engagements to which he is or will become a

(C 14542)

party under the provisions of the Constitution Act, and payments of compensation to members of the Public Services under his power 10 in that behalf We have no comments to make on any of these proposals

214 We have pointed out that the Provincial Upper Houses are not intended to be bodies having equal powers with the Legislative In the case of the Federal Legislature, the proposals 15 in the White Paper contemplate two Houses with nearly co-equal powers The principal difference is in the sphere of finance. It is proposed that Money Bills should only be introduced in the Lower House, the Upper House having power to amend or reject them, and that in relation to Demands for Grants the power of the Upper 20 House should be limited to requiring, but only at the instance of the Government, that any Demand which has been reduced or rejected by the Lower House should be brought before a Joint Session 1 We entirely endorse the principle that, so far as possible, the two Houses should have equal powers, but we are not satisfied that the pro- 25 posals to which we have just referred sufficiently secure this. We think that the Upper House should have wider powers in relation to finance, and that it should be able not only to secure that a rejected grant is reconsidered at a Joint Session of the two Houses, but also to refuse its assent to a grant which has been accepted by the Lower 30 House We think therefore that all Demands should be considered first by the Lower House and subsequently by the Upper, and that the powers of each House in relation to any Demand should be identical, any difference of opinion being resolved at a Joint Session to be held forthwith Consistently with the same principle, we think 35 that Money Bills should be capable of introduction in the Upper Chamber as well as in the Lower

215 We approve the plan of resolving the differences between the Houses by the decision of a majority of the two Houses sitting and voting together. But the principle of equality of powers requires 40 that an effective voice in the final decision should be secured to the Upper House, and it is for that reason that we have accepted the numerical proportion between the two Houses proposed in the White Paper, that is to say, a proportion of approximately 2–3. The principle wise makes approximate a departure from the scheme of 45 Joint Sessions which we have recommended in the case of the

3 White Paper, Proposals 38, 41, and 48

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There is no necessity for so long a period to elapse before Provinces the Joint Session is held as in the Provinces, where the functions of the Upper House are only those of revision and delay We do not think that the White Paper proposals are in all respects satisfactory In particular, we think that there would be an advantage in extending the period after which a Joint Session may be held from three months to six, and in providing that it should not be held during the session of the Legislature in the course of which the difference of opinion arose between the Houses | It should be for the Federal Government to decide whether a Bill is to lapse or be referred to a Joint Session, 10 and in the former case the Government should inform the Legislature of their decision before the end of the current session should be the ordinary procedure, but in the case of Money Bills, Bills affecting the Reserved Departments, or Bills which in the opinion of the Governor-General involve his special responsibilities, 15 • the Governor-General must have power in his discretion to summon a Joint Session and obtain a decision forthwith. Amendments to any

Bill which is brought before a Joint Session should be subject to the rules which we have recommended in the case of the Provinces

216 The question was much discussed before us whether any special States provision ought to be included in the Constitution Act prohibiting tive and States' representatives from voting on matters of exclusively British-India concern. The British India Delegation in their Joint legislation Memorandum urge that this should be done, and their suggestions

25 are briefly as follows —(1) that in a division on a matter concerning solely a British-India subject, the States' representatives should not be entitled to vote. (2) that the question whether a matter relates solely to a British-India subject or not should be left to the decision of the Speaker of the House, which should be final,

30 but (3) that if a substantive vote of no confidence is proposed on a matter relating golely to a British-India subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of a Ministry formed on a basis of collective responsibility, (4) that if the Ministry is defeated on a subject of

35 exclusively British-India interest, it should not necessarily resign We do not think that these suggestions would in any way meet the case Circumstances may make any vote of a Legislature, even on a matter intrinsically unimportant, an unmistakable vote of no confidence, the distinction between formal votes of no confidence 40 and other votes is an artificial and conventional one, and it would be impossible to base any statutory enactment upon it. On the other hand the States have made it clear that they have no desire to

could we suppose that it would be in their interests to do so, but 45 they are anxious, for reasons which we appreciate, that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment, from supporting a Ministry with whose general policy they are fully in agreement, or from withholding

interfere in matters of exclusively British-India concern, nor

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their support from a Ministry whose policy they disapprove these circumstances we think that the true solution is to allow the matter to be regulated by the common sense of both sides and by the growth of constitutional practice and usage, and indeed we have 5 no doubt that both parties will find it in their mutual interest to come to some suitable working arrangement at an early stage. We have, however, one suggestion to make which we think may be worth consideration Under the Standing Orders of the House of Commons all Bills which relate exclusively to Scotland and have 10 been committed to a Standing Committee are referred to a Committee consisting of all the members representing the Scottish constituencies, together with not less than ten nor more than fifteen other members We think that a provision on these lines might very possibly be found useful, and that the Constitution Act might require that any Bill on a subject included in List III should, if extending only to British India, be referred to a Committee consisting either of all the British-India representatives or a specified number of them, to whom two or three States' representatives could, if it should be thought destrable, be added

### (4) THE RELATIONS BETWEEN THE FLDLRATION AND THE FEDERAL UNITS

217 The transformation of British India from a unitary into a Administration Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments The Provincial Federation 25 Governments are at the present time subordinate to the Central constituent

Government and under a statutory obligation to obey its orders and directions though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the provincial administration save for certain limited purposes in matters which under the devolution rules now fall within the transferred 30 provincial sphere But though the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, the conception of a Federation necessarily implies the existence of a 35 nexus of some kind between the Federation and its constituent units We have discussed elsewhere in our Report both the legislative and the financial nexus which the White Paper proposes to create, and we confine our observations here to the administrative relations between the Federal Government as such on the one hand and the Provincial 40 Governments and the Rulers of Governments of the Indian States on the other

218 The Federal Legislature will have power to enact legislation on federal subjects which will have the force of law to every Province and subject to any such limitations as may be contained in the 45 Ruler's Instrument of Accession, in every Indian State which is a member of the Federation. The administration and execution of

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these laws may be vested in the Tederation itself and in federal officers, or the Legislature may devolve upon the Provincial Governments or their officers the duty of executing and administering the law on behalf of the Federal Government (in the case of a State thus would be done by means of an agreement between the Governor-5 General and the Ruler of the State) In the case of laws relating to subjects in respect of which the Federal and the Provincial Legisla tures have concurrent powers of legislation, we understand the intention to be (though the White Paper is by no means clear in this respect) that the functions of administration and execution are 10 to vest in the Provincial Governments The White Paper proposes that it shall be the duty of a Provincial Government so to exercise its executive power and authority in so far as it is necessary and applicable for the purpose, as to secure that due offect is given within the Province to every Act of the Tederal Legislature which applies 15 to that Province 1 This as we read it is a statement of the constitu tional duty of every Province in relation to federal laws which has no sanction behind it other than the moral obligation which must always rest upon the constituent units of a Federation to give effect to the laws of the political organism of which they form a part But 20 something more is required to secure the due execution by a provincial Government of laws relating to subjects on which the Federal Legislature is alone competent to legislate and the Federal Government must be empowered to give directions to a provincial Government for the purpose of securing that due effect is given in 25 the Province to any such law and that the manner in which the Provincial Government's executive power and authority is exercised in relation to the administration of the law is in harmony with the policy of the Federal Government

219 We have said that the White Paper does not make clear the 30 distinction which, as it seems to us, ought to be drawn in this connexion between federal laws within the exclusive and those within the concurrent, field. We think that the Federal Government ought to have power to give directions to a provincial Government.

35 with regard to the first; but with regard to the second, the administration of which will be essentially a matter of provincial concern, the Provinces must be left to act as they think right, though we hope in no anti-federal spirit. In the case of the States, it is proposed that the Ruler should accept the same general moral obligation, 40 which, as we have said, will rest upon the Provincial Governments, to secure that due effect is given within the territory of his State to every Federal Act which applies to that territory. But we think that the White Paper rightly proposes that any general instructions to the Government of a State for the purpose of ensuring that the 45 federal obligations of the State are duly fulfilled shall come directly from the Governor-General himself.

White Paper, Proposal 125.
White Paper, Proposal 127.

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220. It is, however, necessary to provide for a situation, though we Enlarge may be permitted to hope that it will never in practice arise, in which a Provincial Government has declined to carry out the directions Governwhich it has received from the Federal Government. These directions directions 5 would be issued in the name of the Governor-General as the executive head of the Federation, in whose name all executive acts will run; but, where (as will commonly be the case) the directions relate to matters within the ministerial sphere, the Governor-General will be acting upon the advice of his Ministers. Among the special responsi-10 bilities of the Governor of a Province is one for "securing the execution of orders lawfully issued by the Governor-General"; and, since the directions of which we have spoken would be lawful orders of the Governor-General, it would become the duty of the Governor to secure their execution in opposition to the policy and 15 (it must necessarily follow) to the advice, of his Ministers. We do not think that the Governor of a Province ought to be placed in a position in which in effect he is compelled to over-rule his own Ministers at the instance of federal Munisters; and where a conflict of this kind anses hetween the Federal Government and the Government of a Province 20 any directions by the Governor-General which require the Governor to dissent from, or to over-rule, the provincial Ministry ought to be given in the Governor-General's discretion. The Governor-General' would thus become the arbiter between the Federal and the Provincial Government, and we think that disputes between the two are far 25 more likely to be settled amicably by the Governor-General's discretionary intervention. It cannot be assumed that the fault in cases of this kind will always he with the Province; the Federal Government may have been tactless or unwise; and the Governor-General should not be under any constitutional obligation to take 30 action against his better judgment, if the effect would only be to accentuate or embitter the dispute.

221. We are of opinion that the proposals in the White Paper on Modelicathis subject require modification. It should be made clear that the White Paper authority of the Federal Government only extends to the giving of proposals 35 directions to a Provincial Government in relation to the administration and execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate; and that for the purpose of implementing any directions so issued the Governor-General may in his discretion issue such orders to the Governor as 40 he may think fit. A consequential modification will in that event be required in the definition of the Governor's special responsibility for securing the execution of orders lawfully issued by the Governor-General.

222. The White Paper proposes to empower the Governor-General in his discretion to issue instructions to the Governor of a Province 45 as to the manner in which the executive power and authority in the Province is to be exercised for the purpose of preventing any grave menace to the peace and tranquillity of India or any part thereof.<sup>1</sup> It

White Paper, Proposal 126.

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has been suggested that in view of the special responsibility of the Governor to which we have referred above this proposal is superfluous. We do not think it is. The Governor of a Province is to have a special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province, and we think that, but for 5 the proposal to which we have referred, his special responsibility for securing the execution of orders lawfully issued by the Governor-General would necessarily be read as referring to the execution of orders issued by the Governor-General within the sphere of the Governor's statutory functions. But, to take one example which 10 occurs to us, a conspiracy in one Province to disturb the peace and tranquillity of another might well be outside the Governor's special responsibility for the prevention of any grave menace to the peace or tranquillity of his own Province; and since we have no doubt that an ultimate and residuary responsibility for the peace and tran- 15 quillity of the whole of India must vest in the Governor-General, it is plain that the latter's power to give directions to a Governor should be wide enough to cover this case, and that it should be obligatory on a Governor to give effect to those directions, even though it is the peace of a neighbouring Province and not his own which is endangered. 20

223. We do not observe any proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, for the determination of which the Federal Court is the obvious and necessary forum. cannot be supposed that inter-provincial disputes will never arise, 25 and we have considered whether it would not be desirable to provide some constitutional machinery for disposing of them. At the present time the Governor-General in Council has the power to decide questions arising between two Provinces in cases where the Provinces concerned fail to arrive at an agreement, in relation to both trans- 30 ferred and reserved subjects; but plainly it would be impossible to vest such a power in the Governor-General or in the Governor-General or Federal Ministry after the establishment of Provincial Autonomy, though we do not doubt that the good offices of both will always be available for the purpose. But after careful considera- 35 tion we have come to the conclusion that it would be unwise to include in the new Constitution any permanent machinery for the settemlent of disputes of the sort which we have in mind, and in our opinion the more prudent course will be to leave the Provinces free to develop such extra-constitutional machinery as the future 40 course of events may show to be desirable. There will be necessarily many subjects on which inter-provincial consultation will be necessary, as indeed has proved to be the case even at the present time; and we anticipate that sooner or later a system of provincial conferences, held at regular intervals, will come into existence, 45 as we believe has happened in Canada. Suggestions for a formal Inter-Provincial Council have been made to us, but we do not think

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that the time is yet nipe for this. The assistance of Parliament may one day be invoked for the purpose of creating such a Council, but we think that this is a matter on which Indian opinion will be better able to form a considered judgment after some experience 5 in the working of the new Constitution

224 There is however one subject with respect to which we are of wa opinion that specific provision ought to be made The Government of India has always possessed what may be called a common law right to use and control in the public interest the water supplies of 10 the country, and a similar right has been asserted by the legislation of more than one Province as regards the water supplies of the Province 'Water supplies' is now a provincial subject for legislation and administration, but the Central Legislature may also legislate upon it " with regard to matters of inter-provincial concern 15 or affecting the relations of a Province with any other territory Its administration in a Province is reserved to the Governor in Council and is therefore under the ultimate control of the Secretary of State, with whom the final decision rests when claims or disputes arise hetween one Provincial Government and another, or between a 20 Province and a State 1his control of the Secretary of State obviously could not continue under the new Constitution, but it seems to us impossible to dispense altogether with a central authority of some

225 The White Paper proposes to give to the Provinces exclusive Approximate gislative power in relation to 'water supplies, irrigation and canals, under the 25 legislative power in relation to 'water supplies, irrigation and canals, dramage and embankments, water storage and water power, ' and reserves no powers of any kind to the Federal Government or Legislature 1 The effect of this is to give each Province complete powers over water supplies within the Province without any regard 30 whatever to the interests of neighbouring Provinces | the Federal Court would indeed have jurisdiction to decide any dispute between two Provinces in connection with water supplies if legal rights or interests were concerned, but the experience of most countries has shown that rules of law based upon the analogy of private proprietary 35 interests in water do not afford a satisfactory basis for settling disputes between Provinces or States where the interests of the public at large in the proper use of water supplies are involved is unnecessary to emphasise the importance from the public point of view of the distribution of water in India, upon which not only the 40 prosperity, but the economic existence of large tracts depends

226 We do not think that it would be desirable, or indeed feasible. Modifice to make the control of water supplies a wholly federal subject, but thon of White Paper for the reasons which we have given it seems to us that complete proposals provincialization might on occasion involve most unfortunate suggested 45 consequences We suggest therefore that where a dispute arises between two units of the Federation with respect to an alleged use

1 White Paper, Appendix VI, List II

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by one unit of its executive or legislative powers in relation to water supplies in a manner detrimental to the interests of the other, the aggneved unit should be entitled to appeal to the Governor-General acting in his discretion, and that the Governor-General should be 5 empowered to adjudicate on the application. We think, however, that the Governor-General, unless he thinks fit summarily to reject

the application, should be required to appoint an Advisory Tribunal for the purpose of investigating and reporting upon the complaint. The Tribunal would be appointed ad hoc, and would be an expert body whose functions would be to furnish the Governor-General with 10 such technical information as he might require for the purposes of his decision and to make recommendations to him Such recommendations, though they would naturally carry great weight with the Governor-General, would not necessarily be binding on him, and he would be free to decide the dispute in such manner as he thought fit, 15 We think also that provision should be made for excluding the jurisdiction of the Federal Court in the case of any dispute which could be referred to the Governor-General in the manner which we have suggested We should not propose that the powers of the Governor-General should extend to a case where one unit is desirous of securing 20 the right to make use of water supplies in the territory of another unit, but only to the case of one unit using water to the detriment of another With this limitation we believe that the plan would be a workable one, and that it could not reasonably be regarded as inconsistent with the conception of Provincial Autonomy

227 We have found occasion in later paragraphs to draw attention to the importance of the coordination of research in connection with the special subjects of Forestry and Irrigation is a matter very relevant to any consideration of the future relations between the Federal and Provincial Governments Whatever 30 criticisms may have been levelled in the past against an excessive centralisation of government in India, they can have little application to the facilities thereby created for the pooling of ideas and of methods so as to enable the whole of India to benefit from the administrative experience of every part. It would be deplorable if 35 the establishment of Provincial Autonomy were to lead the Provinces to suppose that each could regard itself as self-sufficient, or to tempt the Centre to disinterest itself in the efforts which it has made in the past to collect and co-ordinate information for general use If our recommendations are adopted, the existing central research 40 institutions will remain under the exclusive control of the Federal Government, but they can only flourish if assured that the interest and support of the Provincial and States' Governments are still assured to them The Statutory Commission made special reference to the Council of Agricultural Research, which was established as 45 a result of the recommendations of the Royal Commission on Agriculture in India, and we agree with them in thinking that similar institutions might with advantage be established in other fields, such as Public Health and Education.

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### APPENDIX (II)

SCHEME FOR ELECTION OF BRITISH INDIA REPRESENTATIVES TO COUNCIL OF STATE AND HOUSE OF ASSEMBLY

### Council of State

- 1 The British India representatives will number 150, elected in the 5 manner described below, together with 6 members nominated by the Governor-General in his discretion
- 2 The members, other than those nominated, will be elected in three separate Divisions, A, B and C

Members in Division A will retire after three years from the date v her 10 the House is first constituted, and thereafter every nine years

Those in Division B after six years from that date and thereafter every nine years.

Those in Division C after nine years from that date and thereafter every 15 nine years

The members to be elected for each of the three Divisions will be allocated as follows ---

							A	$\boldsymbol{B}$	C	Total.
	Madras		• •				0	10	10	20
20	Bombay						8	0	8	18
	Bengal						10	0	10	20
	United 1	Provi	ıces				10	10	0	20
	Punjab	• •		٠.			8	8	0	16
	Bihar					• •	0	8	8	16
25	Central	Provu	nces (v	nth Be	erar)	• •	Ú	8	0	8
	Assam						0	5	0	5
	North-V	Vest F	rontie	r Prov	ince		0	0	5	5
	Sind					• •	5	Ō	0	5
	Orissa.						5	0	0	5
30	Coorg						0	0	1	1
	Aimer						0	Ó	i	1
	Delhı						0	0	1	1
	Baluche	tan					0	0	1	1
	Indian (	hrist	lans				1	Ō	i	2
35	Anglo-I	adians	3	• •			0	Ō	1	1
	Europea			•	• •	• •	3	1	3	7
					Total		50	50	50	150

3 The Indian Christian, Anglo-Indian and European members will be chosen by three Electoral Colleges of their own for the whole of British India, 40 composed respectively of the Indian Christian, Anglo-Indian and European members of the Provincial Legislatures (including members from the Upper Houses of bicameral Provinces) The method of voting by the European Electoral College, when more than one seat is to be filled, will be the single transferable vote

45 4 In the Provinces of Madras, Bombay, United Provinces and Bihar the Muhammadan members of the Provincial Upper House voting alone will elect one member for each of the two Divisions of the Federal Upper House in which the Province is represented. The remainder of the seats allocated to the Governors' Provinces, apart from these 8 seats, will be filled in the 50 following manner.—

(a) In the bicameral Governors' Provinces the members will be elected by all the members of the Provincial Upper House (except Indian Christian, Anglo-Indian and European members) by means of the single transferable pote.

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(b) In the unicameral Governors' Provinces, where Upper Houses do not exist, the members will be elected by a specially constituted Electoral College by means of the single transferable vote. The composition of these Electoral Colleges will be as follows—

5				Muham-	
	Province	General	Sikh	madan	Total.
	Punjah	16	11	30	57
	Central Provinces (with Berar)	31	_	5	36
	Assam	2I	_	12	33
10	North West Frontier Province	5	1	19	25
	Sind	10		18	28
	OTICE	97		9	80

Members of the Electoral Colleges will be chosen by direct election from territorial communal constituencies. The franchise will be similar to that 15 employed in other Provinces for direct election to the Provincial Upper House

5 Special provisions will be necessary for the selection of the representative 'fram Chief Commissioners' Provinces, except in the case of Coorg where the representative will be elected by members of the Coorg Legislature

20 6 When the Federal Council of State is constituted for the first time, on that occasion, and on that occasion only, members of all three Divisions will

have to be elected at the same time. There will, therefore, in the case of six Provinces be candidates for two different Divisions simultaneously election will take place first for the Division which will be re-elected later 25 than the other one Those candidates who are not successful in the election for that Division will form the candidates for the immediately following election for the other Division.1

- Casual vacancies among the elected members of the Council of State will, so long as communal representation is retained as a feature of the Constitution, be filled by election by those members of the Provincial Upper House (or 30 Electoral College) who are members of the Community to which the vacating member belongs, as proposed in the White Paper.
- 8. It will be observed that, although one-third of the Council of State will be renewed at a time, the representatives of any given Province will be renewed half at a time in the larger Governors' Provinces, and the whole at a time 35 in other Provinces. The object of this arrangement is to avoid reducing the number of seats to be filled at any Provincial election to an extent which would be likely to have the effect of producing inequitable results from the system of proportional representation.
- 9 The object of the provision of eight seats to be filled by Muhammadan 40 electors only is to secure that the Muhammadan community should be in a position to secure one-third of all the British India seats if every Muhammadan elector in using first and succeeding preferences gave priority to all candidates of his own community

<sup>3</sup> It will probably be found possible to avoid a double reference to the voters. After the election to one Division is completed, the election to the other Division could presumably take place on the basis of the angunal voting papers, the names of the candidates already successful for the Other Division being eliminated and the preferences on the voting papers being remimbered accordingly
White Paper, Proposal 28

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We agree with the proposal in the White Paper1 that the Muhammadan community should be placed in a position in which they could achieve this result, and it is unlikely, that they would be able to do so without the allocation to them of these few specifically communal seats. This special provision is analogous to that which the Secretary of State for India has 5 proposed for the san e purpose in modification of Appendix I of the White Paper.

10. In the Governors' Provinces a candidate will be qualified for election to the Council of State if he (or she) is qualified for election to the Provincial Upper Chamber (or Electoral College, as the case may be)

Special provisions will be required for the qualifications of other candidates,

#### Federal House of Assembly

- 11 The British India representatives in the Assembly will number 250, elected in the manner described below
- 12. The allocation of seats between Provinces and between the various 15 special interests and communities will be in accordance with the numbers set out in the Table in Appendix II of the White Paper.
- 13. The method of election to the special interest seats, that is to say, to the special seats assigned for women, commerce and industry, landholders and labour, will be as proposed in Appendix II to the White Paper.
- 14. In the Governors' Provinces, election to the seats in the Assembly allocated as General or Mubammadan will be by the members of the Provincial Lower House who hold respectively General or Muhammadan seats in that House Members who hold special interest seats in the Provincial Lower House will not participate. In the Punjab those members who hold Sikh seats in the 25 Provincial Legislature will elect to the six Sikh seats from the Punjab in the Assembly. Subject to the following provision relating to the Depressed Classes, the method of voting within each of the above groups of electors will be the single transferable vote
- 15. In the case of General seats, it would be a simplification if there were 30 no seats reserved for the Depressed Classes, reliance being placed on the

proportional representation system to secure a due share of the General seats for the members of the Depressed Classes. Unless however, the adoption of such a course were agreed between the caste Hindus and Depressed Classes, we regard it as desirable to avoid disturbing, so far as possible the arrangements in the White Paper for Depressed Classes representation in the Federal Lower House which are based on the Poona Pact. Accordingly, out of the General seats there will be reserved for the Depressed Classes the number of seats indicated in Appendix II to the White Paper.

16 The following seems to be a possible method for combining procedure for reservation of seats with the use of the single transferable vote. After the voting papers have been received, and before the single transferable vote procedure is applied, those Depressed Class candidates, up to a number equal to that of the reserved seats, who receive the highest number of first preferences would be declared to be elected. The single transferable vote procedure would then be applied for the election to the remaining general seats. It is necessary to provide in accordance with the Poona Pact, that the only candidates qualified to be elected to the reserved seats should be those elected by a primary to a number equal to four times the number of reserved seats. In order to constitute a primary of adequate size, we think that it might consist, not only of those members of the Provincial Lower House

White Paper, Introd para 18
Evidence Answer to Question 7811

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who hold the seats reserved therein for Depressed Classes but also of those who were successful candidates at the primary Depressed Class elections for the Provincial Lower House though they did not secure seats at the final election for that House

17 The seats allocated to Indian Christians, Anglo-Indians and Europeans will be filled by election by three Electoral Colleges of their own composed of all those who hold respectively Indian Christian, Anglo-Indian and European seats in the Provincial Lower Houses Those who hold special interest seats in those Houses will not participate of members from all the Provinces, will elect separately the member from each Province to which is allocated an Indian Christian, Anglo-Indian or European seat

18 Special provisions will be necessary for the selection of the representatives from Chief Commissioners' Provinces, except in the case of Coorg, where the representative will be elected by members of the Coorg Legislature

T9 In Governors' Provinces (and Coorg) a candidate will be qualified for election to a seat in the Federal Assembly (other than a special interest seat) if he is qualified for election to the Provincial Lower House for a General, Muhammadan or Sikh seat, as the case may be Qualifications for a candidate for those General seats which are reserved for the Depressed Classes will be as described above

Special provisions will be required for the qualifications of candidates in Chief Commissioners' Provinces other than Coorg

<sup>1</sup> In Madray there are two Indian Christian seats Voting for these will be by means of the single transferable vota,

25

### APPENDIX (III)

Scheme of distribution of States' seats in Federal Legislature as propounded by Governor-General as basis of discussion.

In Annexure A below, list I includes (a) the seats allotted to certain States individually which are not included in the regional lists II-IX which follow; 5 (b) the total number of seats allotted to the States with continuous or alternating representation included in each of the regional lists II-IX, and (c) the total number of seats allotted in list X to the joint representation of groups of minor non-salute States which are not included in the regional lists Annexure B gives the States accorded individual representation in Annexure B gives the States accorded individual representation in 10 order of salute and population with the representation allotted to each

There are 104 States' seats in the Council of State Four seats have been added to the 100 seats referred to in the body of the Report, in place of the States' share (40 per cent ) of the 10 seats which the White Paper proposed should be filled by nomination by the Governor-General The nominated 15 seats in the Council of State will accordingly be reduced to six from British

The 104 seats available in the Council of State have been divided into three categories (a) those to be filled continuously by one State, (b) those to be filled in alternation by two or more States, as shown in groups in lists II-IX, 20 and (c) those to be filled by the representatives of the groups of minor States given in list X, the three categories having been determined with a view to enabling as many States as possible to enjoy individual representation with due regard to their relative importance, and, where a seat is shared between two or more, to their proximity

The 125 seats available in the House of Assembly have been distributed roughly on a population basis, but in such a way as to reduce slightly the number of seats as allable to the most populous States so as to secure separate representation for as many States as possible. So far as possible the groups for alternating representation of States in a single seat proposed for the Council 90 of State have been retained for the Assembly. But it is intended that in the latter Chamber the States grouped together shall nominate joint representatives mstead of having the option of occupying in turn the seat allotted to them

It is proposed that group representation shall be subject to the following provisions If not less than half the number of Rulers combined in a particular 35 group accede to Federation, they shall be entitled to fill the scat allotted to the group. To meet cases of difficulty when less than 50 per cent of the members of a group accede to I'cderation, the Governor-General should be empowered to determine disputes and to vary the composition of groups when necessity arises. The members of an alternating group shall be entitled, 40 each in turn, to appoint a representative for a period of one calendar year. But if States so prefer they may pool their allotted quota of seats with those of other States so as to be represented by joint nominees, thus possibly, where entitled under the scheme only to a seat in rotation, securing instead continuous joint representation. To enable such arrangements to be made 45 voluntarily between States the Governor-General shall be empowered to vary the distribution of groups as scheduled to the Constitution Act where necessity arises, subject to his being satisfied that the arrangements proposed would not adversely affect the rights and interests of other States which do 50 not desire to participate therein.

## ANNEXURE A

# LIST I

				LIGI	1			
	N	ama of Si	ate			No. of Seats in the Upper House	Popula- iron	No. of Seats in the Lower House
(a)	Hyderabad					5	14,436,148	14
• • •	Mysore					3	6,557,302	7
	Kashmir			• •	• •	3	3,646,243	
	Gwalior		• •		••	3	3.523,070	4
	Baroda					3	2,443,007	4 4 3 1
	Kalat					2	342,101	1
	Travancore				• •	2	5,095,973	5
	Cochin	• •	• •		••	2 2	1,205,016	5 1
	Rampur		• •			1	485,225	1
	Benares					1	391,272	1
	Sikkım					1	109,808	
(b)	Rajputana Ag	ency (Lis	t II)	• •		19	11,180,826	17
` '	Contral India	Agoncy (	List II	n		17	6,365,030	14
	Rajputana	and cert	Guye ain S Deco	itates	itates from states			
	Agencies (L Deccan State	ist IV) is and .	Kolkaj	ur A	gency	13	4,784,910	12
	(List V) Punjab Sta	• •			Tehri	5	2,322,314	5
	(Garhwal) (	List VI)	·			11	5,048,964	11
	Bengal and A Madras Sta	ssam Stat ites Gro	up ()	Pudukk		2	1,418,942	3
	Banganapa	He and Se	andur)	·		1	459,495	1
	Eastern States Orissa State	Agency	-DIAG	ana	(List	3 ]	4,100,460	9 )
( <i>G</i> )	Central Prous	nces State	s (9 S	tates)	IX)	2 5	2,193,661	9 5
(4)	above (List			• •	•••	5	2,818,876	7
						104		125

# LIST II Rajputana

	Upper	House	8		Lower House					
Name of	State			No of Seals	Name of State		Popula- tron	No. of Seats		
Udaipur Jaspur Jodhpur Bikaner Alwas Kotah				2 2 2 2 1	Udaipur Jarpur Jodhpur Bikaner Alwar Kotah	:	1,566,910 2,631,775 2,125,982 936,218 749,751 683,804	2 3 2 1 1		
Bharatpur Tonk	••	• •	••	i	Bharatpur Tonk	• •	486,954 317,360	1		

## LIST II-continued

	Uppe	r Hous	io		Lower House		
Name o	f State			No of Seais	Name of State Popula- No. of tion Seats		
Dholpur Karauli	::	::	:-	1 1	Group I  Dholpur 254,986  Karauli 140,525		
Bundı Sırohi	••	••	••	1 1	395,511  Group II  Bund: 216,722 Siroh: 216,528		
9-gun S in grou alternat	State of ps of the representation of the contract of the contr	f Shah 2 and esentat sup I	pura 3— ion.)		433,250  Group III  Dungarpur . 227,544  Banswara . 225,106		
Dungarpu Banswara	•••	••	::}	1	452,650 Group IV		
Partabgar Jhalawar Shahpura	h	up II	::}	1	Partabgarh . 76,539 Jhalawar . 107,890 Shahpura . 54,233  238,662		
Jaisalmer Kishengar		p III	::}	1	Group V  Jaisalmer 76,255  Kishengarh 85,744		
Transcreen			_				

## LIST III

# Central India

	Uppe	Hou:	58		Lower House			
Name o	of State			No. of Seats	Name of State Popula- No. of ton Seats			
Indore Bhopal Rewa Datia Orchha Dhar	••		••	2 2 2 1 1	Indore 1,318,217 2 Bhopal			
	of 2— ntation) <i>Gro</i> enior)	– alter	s in mate ∴}	1	Group II  Dha 243,430  Dewars (Semor) 83,321  Dewas (Junior)			

# LIST 111-continued

Tibber House	LIST III	Lower House			
Upper House					
	No. of Seats	Name of State Popula- No. of tion Seats			
Group II		Group III			
Ratlam	1	Jaora 100,166 Ratlam 107,326			
		20 <b>7,492</b>			
(I1-gun States in group of 2—alternate repre- sentation.)		Group IV			
Panna	<b>.</b> 1	Panna			
Ajaigarh 5	_	Ajaigarh 85,895 / *			
	_	298,025			
(11-gun States in group of 3 —alternate representa-	·				
tion.) Charkhari		Charlebori 120 3513			
Conatarpur	- 1	Group V Charkhari . 120,351 Chhatarpur . 161,267 Baoni . 19,132			
Baoni		Baoni 19,132			
•		300,750			
(11- and 9-gun States in group of 5—alternate representation.)					
Bijawar		Group VI			
Samthar		Bijawar			
Mainar Nagod	1	Maihar 68,891 > 1			
Bijawar Samthar Maihar Nagod Baraundha		Bijawar			
(11-gun States in group of 2—alternate repre- sentation.)		308,810			
Barwani	} 1	Group VII			
Ali Rajpur	; -	Group VII   Barwani			
(11-gun States in group of 3—alternate repre- sentation.)		243,073			
Jhabua Sailana	1	Group VIII			
Sailana Sitamau	} 1·	Group VIII   Jhabua 145,522     Sailana 35,223   1			
ortaniau	,	Sailana			
(11-gun States and 9-gun State of Khilchipur in group of 3—alternate		209,167			
representation.)		Group IX			
Rajgarh	l	Group IX Rajgargh . 131,891 \ Narsingarh . 113,873 \} 1			
Narsingarh Khilchipur	} 1	Narsingarh			
	17	291,347 14			
		1			

LIST IV

Western India and Gujarat States; States of Palanpur, and Dania from the Rajputana Agency; and Janjira from the Deccan States Agency
Upper House
Lower House

Opper House		Lower House			
<del></del>	No. of	Popula- No. of Name of State tron Seats Cutch 514,307 1			
Name of State	Seats	Name of State tron Seats			
Cutch	1 )	Cutch 514,307 1			
Idar	1	Idar 262.660 1			
Nawanagar	ī	Nawanagar 409.192 1			
Bhavnagar	î l	Bhaynagar 500.274 1			
Junagadh	ī	Nawanagar . 409,192 1 Bhavnagar . 500,274 1 Junagadh . 545,152 1			
(13- and 11-gun States in		Group I			
groups of 2-alternate	ĺ	Rajpipla			
representation).		Rajpipla 206,114 } 1 Palanpur 264,179 } 1			
Group I	1				
Rajpipla	1	470,293			
Palanpur	·	Group II			
		Dhanna and han OP Oct 3			
Group 11	1	Gondal			
Dhrangadhra }	1				
Dhrangadhra	-	294,807			
Group III	ł	Const. TTT			
		Group III			
Porbandar	<b>1</b>	Porbandar 115,673 1 13,023 1			
	1	MOIVE (1 110,020)			
(11- and 9-gun States in		228,696			
groups of 3—alternate		220,000			
representation).	1	Group IV			
Group I		Radhanpur . 70,530			
Radhanpur	1	Wankaner . 44.259 \ 1			
Wankaner	<b>1</b> ]	Palitana 62,150			
Radhanpur	· !				
Group II		176,939			
Cambay		Group V			
Janura	- 1 i	Cambay 87.761)			
Janjura } Dharampur }		Janjira 110,366 } 1			
	1	Cambay 87,761 Janjira 110,368 Dharampur 112,051			
(9-gun States in groups of 3 and 4—alternate					
of 3 and 4-alternate	•	. 310,178			
representation).		-			
Group I	i	Group VI Baria 159,429			
Baria		Baria 159,429			
Chhota Udepur	- 1	Chhota Udepur . 144,640			
Sant	•	Sant 83,538 Lunawada 95,162			
Lunawada		Lunawada 95,162 J			
Group II		482,769			
	í				
Balasinor	_	Group VII			
Sachin	- 1	Balasinor 52,525			
Sachin		Bansda 48,807			
	1	Sachin 22,107			
Group III		Jawhar 57,280			
Dhrol	Į	Dhrol			
Tambdi	1	Limbdi 40,088			
Wadhwan	- 1	Wadhwan 42,602			
Kajkot {	· l	Rajkot 75,540			
Danta	- 1	Danta 29,023)			
		200 277 17			
	13	389,625 12			
		<del></del>			

# LIST V Deccon States and Kolhapur

Decian States	ana Amapur				
Upper House	Lower House				
Name of State No. of Seats Kolhapur	Name of State Popula- No. of tron Seats Kolhapur 957,137 1				
(9-gun States in a group of 4—alternate representation). Sangli	Sangli 258,512 Bhor 141,546 1				
(Non-salute States in groups of 5—alternate representation).	Savantvadi 230,589 Mudhol 62,860 1 293,449				
Group I  Jamkhandi	Group III				
Group II	Group IV  Akalkot				
5	338,931 5				

# LIST VI

# Punjab States and Tehri-Garkwal

TO 47 1	0 . 10.	atiala	. 1.625.520 2
Patiala	-		
Bahawalput		ahawalpur	984,612 1
Khairpur	1 K	hairpur	227,183 1
Kapurthala	1   K	apurthala	316,757 1
Jind	1   Ji	nd	324,686 1
Nabha	1   N	abha	287,574 1
(11-gun States and 9-gun	Te	hri-Garhwal	349,573 1
State of Loharu in			
		Gr	oup I
	M	andi	207,465
representation.)	Bi	laspur	100.994 > 1
Group I		ket	58,408
	5"		50,100
Mandi			366,867
Bilaspur }	4		200,807
Suket		Ger	rup II
Group II	61-	mur	
		namba	148,568
Tehri-Garhwal	, , , , , ,	TATILLES	140,010
Sirmur	4		00E 420
Chamba			295,430
Group III		Gro	up III du
Faridkot	Fa	ridkot	., 164,364
Malerkotla		alerkotla	83,072 > 1
Loharu		oharu	23,338
		A 1414 PM P P	
· · · · · · · · · · · · · · · · · · ·	11		270,774 11
•	<del></del>		· ·

# LIST VII

# Bengal and Assam States

Cooch Behar	1	Congn Beam.	• •	596,886	1
(Alternate representation.) Tripura	1 2	Tripura Manipur	• •	382,450 445,606	1 1 3

# LIST VIII

## Madras States

Upper House		Lower House				
Name of State	No. of Seats	Name of State	Popula- No. of tion Seats			
(Group representation.) Pudukkottai Banganapalle Sandur	} 1	Pudukkottai Banganapalle Sandur	400,694 39,218 13,583 453,485			

# LIST IX Eastern States Agency

(a) Bihar and Orissa States  (9-gun States in a group of 4—alternate representation)  Mayurbhan; Patna Kalahandi Sonpur  (Non salute States in groups of 5—alternate representation)	(a) Bikar an Mayurbhanj Patna Kalahandi Sonpur	889 603 1 586 924 1 513,716 1 237,920 1
Group I  Keonjhar Dhenkanal Nayagarh Talcher Nilgiri  Group 11  Gangpur Bamra Seraikela Baud Bonai  3	Keonjhar Gangpur Dheniranal Nayagarh Seraikela Baud Talcher Bonai Nilguri Bamra	460,609 1 356 674 1 284 326 142 406 143 525 135 248 69,702 80 186 68 594 151,047 1,892,297
(b) Central Provinces (Non-salute States in a group of 4—alternate representation) Bastar Surguja Raigarh	(b) Cents Bastar Surguja	val Provinces 524 721 1 . 501,939 1
Nandgaon  (Non salute States in a group of 5—alternate representation)  Khairagarh Jashpur Kanker Sarangarh Korea •	Raigarh Khauagarh Jashpur Kanker Sarangarh Korea Nandgaon	277,569 157,400 193,698 136,101 128,967 90,886 182,380 1,167,001 5

LIST X
Non-Salute States

Upper House		Lower House			
Name of State	No. of Seats	Name of State	Popula- tion	No, of Seats	
States in Western Kathi- awar and Eastern Kathiawar Agencies	1	States in Western KathiawarAgen- cy	421,435	1	
States in Sabar Kantha, Gujarat States and Deccan States Agencies	1	Old Banas Kan- tha Agencies States in Old Mahi Kantha, Gujarat States and Dec-	467,0 <del>9</del> 6	1	
Bihar and Orissa and Cen- tral Provinces States (Eastern States Agency)	1	can States Agencies  Bihar and Orissa and Central Provinces States (Eastern States	377,413	1	
Central India States and Rajputana States (Kus- halgarh and Lawa)	1	Agency) Central India States and Rajputana States (Kushal-	822 <b>,200</b>	2	
		garh and Lawa) Simla Hill States	319,089	1	
Simla Hill States and Kalsia, Pataudi and Dujana	1	and Kalsia, Pa- taudi and Dujana	437,787	1	
	5			7	
	-	•			

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ANNEXURE B

Note.—(The left-hand figures are those of the population in thousands.)

Upper Lo House Ho	
Salute-21 guns	Salute-13 guns
State	State
	4 Cooch Behar 590 1 1
	7 Junagadh 545 1 1
	4 Rhavnagar 500 1 1
	4 Nawanagar 409 1 1
	3 Benares 391 1 1
22300	Тиршта 382 1/2 1
	Jind 325 1 i
Salute—19 guns	Kapurthala 316 1 1
Travancore . 5,096 2	5 Nabba 287 1 1
	2 Palanpur 264 1/2 1/2
	0 000 1/0 1/9
	2 Rajpipia 208 1/2 1/2 1 Porbandar 116 1/2 1/2
T1 3	73 3 100 100 100
TP 1"	1 7 1 10 10
Kalat 342 2	- 1
Saluto—17 guns	Dhrangadhra 89 1/2 1/2
	3
Y- 11	
	2
TO	2 Salute—11 guns
	2 Manipur 446 1/2 1
	1 Pudukkottai . 401 group 1/3
	1 Tehri-Garhwal 350 1/3 1
	1 Panna 212 1/2 1/2
	1 Mandi 207 1/3 1/3
	I Gondal 206 1/2 1/2
	1 Fandkot 164 1/3 1/3
	1 Chhatzrpur 161 1/3 1/3
Bundi 217 1 1	/2 Sirmur 149 1/3 1/2
Karaulı 141 1 1	$\frac{1}{2}$ Chamba 147 $\frac{1}{3}$ $\frac{1}{2}$
	Jhabua 146 1/3 1/3
	Barwam 141 1/2 1/2
Salute—15 guns	Rajgarh . 132 1/3 1/3
Alwar 750 1	1 Charkham . 120 1/3 1/3
Rampur 465 I	1 Bijawar 116 1/5 1/5
Orchha 315 1 1	/2 Narsingarh 114 I/3 1/3
	1 Morvi 113 1/2 1/2
Dholpur 255 1 1	/2 Janjira 110 1/3 1/3
Dhar 243 1 1	/3 Ahrajpur 102 1/2 1/2
Dungarpur 228 1/2 1	/2 Bilaspur . 101 1/3 1/3
Khairpur 227 1	1 Cambay 88 1/3 1/3
Banswara . 225 1/2 1	/2 Ajaigarh . 86 I/2 1/2
Sirohi . 217 1 1	12 Malerkotla 83 1/3 1/3
Datia	/2 Radhanpur 71 1/3 1/3
Sikkum 110 1 -	Suket 58 1/3 1/3
	/2 Wankaner 44 1/3 1/3
	/3 Sailana 35 1/3 1/3
Partabgarh . 77 1/3 1	/3 Samthar 33 1/5 1/5
laisalmer 78 1/2 1	M S-1 00 1/9 1/9
	'89 Decen 10 1/9 1/9
- Quinty 10 1/2 1	5   Daum 18 1/5 1/5

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	~~8*				
	Upper Lower			pper I	
	House House			louse I	Iouse
Saluta-	–9 guns	Salute—1	Ion-sal	ute	
State	5,4	State			
Mayurbhan	890 1/4 1	Bastar	<b>52</b> 5	1/4	1
Patna	567 1/4 1	Surguja	502	1/4	1
Kalahandı	514 1/4 1	Keonjhar	461	1/5	1
Sangh	259 1/4 1/2	Gangpur	357	1/5	1
Sonpur	238 1/4 1	Dhenkanal	284	1/5	3/8
Savantvadı	231 1/4 1/2	Raigarh	278	1/4	3/7
Baria	159 1/4 1/4	Jashpur	194	1/5	3/7
Chhota Udepur	145 1/4 1/4	Nandgaon	182	1/5	3/7
101	142 1/4 1/2	Khauragarh	157	1/4	3/7
Dharampur	112 1/3 1/3	Bamra	151	1/5	3/8
Lunawada	95 1/4 1/4	Seraikela	144	1/5	3/8
Sant	84 1/4 1/4	Nayagarh	142	1/5	3/8
Rajkot	76 1/5 1/5	Kanker	136	1/5	3/7
Nagod	75 1/5 1/5	Band	135	1/5	3/8
Maihar	69 1/5 1/5	Sarangarh	129	1/5	3/7
Mudhol	63 1/4 1/2	Jamkhandi	114	1/5	1/5
Pahtana	62 1/3 1/3	Muraj (Semor)	94	1/5	1/5
Tarabas	57 1/4 1/4	Akalkot	93	1/5	1/5
Oh - harren	54 1/3 1/3	Jath	91	1/5	1/5
TI-I- and an	53 1/4 1/4	Korea	91	1/5	3/7
771-	49 1/4 1/4	Bonai	80	1/5	3/8
77h-lahaman	48 1/3 1/3	Aundh	76	1/5	1/5
Wadhwan	43 1/5 1/5	Talcher	70	1/5	3/8
Tarabala	40 1/5 1/5	Nilgin	69	1/5	3/8
Banganapalle	39 group 1/3	Kurundwad	44	1/5	1/5
T\L1	28 1/5 1/5	(Senior).	-	~,-	-1-
T -La	23 1/3 1/3	Phaltan	43	1/5	1/5
Th	23 1/5 1/5	Miraj (Junior)	40	1/5	1/5
Cashen		Kurundwad	40	1/5	1/5
<b>30 31</b>		Junior).	~~	-10	-,-
Haraundna	16 1/5 1/5	Ramdurg	35	1/5	1/5
		Sendur	14	group	1/3
				Proch	-,0

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### IV. SPECIAL SUBJECTS

### (1) THE DISTRIBUTION OF LEGISLATIVE POWERS

228. In an earlier part of this Report we have discussed briefly and Importance in general terms our conception of a statutory distribution of subject 5 legislative powers between the Centre and the Provinces as an essential feature of Provincial Autonomy and as being itself the means of defining its ambit. But the precise method by which this general purpose is to be effected is a matter of such paramount importance to the working of the Constitution which we envisage

10 as to demand more detailed examination.

229. We bave already explained that the general plan of the White Statistory Paper, which we endorse, is to enumerate in two lists the subjects in delimitation of relation to which the Federation and the Provinces respectively will regulative relation to which the Federation and the Provinces respectively will powers. have an exclusive legislative jurisdiction; and to enumerate in a 15 third list the subjects in relation to which the Federal and each Provincial Legislature will possess concurrent legislative powersthe powers of a Provincial Legislature in relation to the subjects in this list extending, of course, only to the territory of the Province, The result of the statutory allocation of exclusive powers will be to 20 change fundamentally the existing legislative relations between the Centre and the Provinces. At present the Central Legislature has the legal power to legislate on any subject, even though it be classified by rules under the Government of India Act as a provincial subject, and a Provincial Legislature can similarly legislate for its own 25 territory on any subject, even though it be classified as a central subject; for the Act of each Indian Legislature, Central or Provincial, requires the assent of the Governor-General, and, that assent having been given, section 84 (3) of the Government of India Act provides that "the validity of any Act of the Indian Legislature or 30 any local Legislature shall not be open to question in any legal proceedings on the ground that the Act affects a provincial subject or a central subject as the case may be." If our recommendations are adopted, an enactment regulating a matter included in the exclusively Provincial List will hereafter be valid only if it is passed 35 by a Provincial Legislature, and an enactment regulating a matter included in the exclusively Federal List will be valid only if it is passed by the Fcderal Legislature: and to the extent to which either Legislature invades the province of the other, its enactment will be ultra vives and void. It follows that it will be for the Courts to

or provincial, as the case may be. The questions which may arise 1 Supra, para. 48.

40 determine whether or not in a given enactment the Legislature has transgressed the boundaries set for it by the exclusive List, federal

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as to the validity of legislation in the concurrent field are more complicated, and we shall discuss them later; but here, also, disputes as to the validity of legislation will in the last resort rest with the

230. We do not disguise the fact that these proposals will open the Any other door to litigation of a kind which has hitherto been almost unknown plan inconin India; nor have we forgotten that the Statutory Commission Provincial expressed the hope that the provisions of the existing Act which Autonomy. we have mentioned above would be preserved. As we shall explain

our recommendations will have the effect of preserving in the limited 10 sphere of the concurrent field the main feature of the existing system, but we feel no doubt that the White Paper correctly insists upon a statutory allocation of exclusive jurisdictions to the Centre and the Provinces respectively as the only possible foundation for the Provincial Autonomy which we contemplate. We are fully 15 sensible of the immense practical advantages of the present system, and of the uncertainties and litigation which have followed elsewhere from a statutory delimitation of competing jurisdictions, but we are satisfied that a relationship between Centre and Provinces, in which each depends in the last resort for the scope of its legislative 20 jurisdiction on the decision of the Central Executive as represented by the Governor-General would form no tolerable basis for an enduring Constitution and would be inconsistent with the whole conception of autonomous Provinces

The revned Lists. 231 The Lists, as they appear in Appendix VI to the White Psper, 25 are described as illustrative and do not purport to be either complete or final. Since their publication, however, they have been subjected to a careful scrutiny by the Government of India and the Provincial Governments, whose criticisms have in their turn been examined by the framers of the original Lists, and the results of this scrutiny 30 and examination have been placed at our disposal. In the light of this further information we are satisfied (though the final form must be a matter for the draftsman) that the revised Lists which we append to this chapter represent a workable and appropriate allocation of legislative powers.

Two Lasts or one as the method of defining exclusive juris232 We confine our attention for the moment to Lists I and II, which define respectively the exclusive jurisdiction of the Centre and of the Provinces. We helieve that the attempt which these Lists represent to allocate by enumeration with any approach to completeness the functions of legislation, including taxation, to rival Legislatures is 40 without precedent. In other Constitutions the method adopted has usually been to specify exhaustively the subjects allocated to one Legislature and to assign to the other the whole of the unspecified residue, and this method has not only the ment of simplicity, but diminishes greatly the opportunity for litigation. But, as we have 45

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said elsewhere, opinion in India is sharply divided into two opposing schools of thought, one of which refuses to countenance the hias in favour of the Centre, which is assumed to follow from the possession by the Centre of residual powers while the other as ngidly refuses to concede the possession of these powers to the Provinces ourselves convinced that the laborious and careful enumeration of hoth sets of subjects has secured that in fact no material and unforeseen accretion of power, either to Centre or Provinces, would result from the elimination of one I ist or the other and we are satisfied that the process has reduced the residue to proportions so 10 negligible that the apprehensions which have been felt on one side or the other are without foundation Recognising, however, the strength of Indian feeling or this matter we are unwilling to disturb the compromise embodied in the White Paper, the effect of which is to empower the Governor-General acting in his discretion to 1 allocate the Centre or Province as he may think fit the right to legislate on any matter which is not covered by the enumeration in the Lists We are conscious of the objections to this proposal,

it is inconsistent with our desire to see a statutory delimitation of egislative jurisdictions: and the power vested in the Governor-Jeneral necessarily empowers him not merely to allocate an unenumerated subject, but also in so doing to determine conclusively that a given legislative project is not, in fact, covered by the enumeration as it stands,—a question which might well be open to argument, though we assume that in practice the Governor-General would seek an advisory opinion from the Federal Court. On the other hand, it must not be forgotten that an enumeration of the powers of the Centre and the allocation of the unspecified residue to the Provinces involves the consequence that the Provinces would acquire the right to assume to themselves any unspecified sources of taxation which might hereafter be devised; and if this position were accepted it might well he necessary to deal separately and by a different method with the power to impose taxation. We recommend, however, as some mitigation of the uncertainty arising from the inevitable risks of overlapping between the entries in the Lists, that the Act should provide that the jurisdiction of the Federal Legislature shall, notwithstanding anything in Lists II and III, extend to the matters enumerated in List I and that the jurisdiction of the Federal Legislature under List III shall, notwithstanding anything in List II, extend to the matters enumerated in List III. The effect of this will be that, in case of conflict between entries in List I and entries in List II, the former will prevail, and, in case of conflict between entries in List III and entries in List II, the former will prevail so far as the Federal Legislature is concerned.

233. We turn now to the problems presented by the Concurrent List. The Con We have explained elsewhere our reasons for accepting the principle of a Concurrent List, but the precise definition of the powers to be conferred upon the Centre in relation to the matters contained in it

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presents a difficult problem. In the first place, it appears to us that, while it is necessary for the Centre to possess in respect of the subjects included in the List a power of co-ordinating or unifying regulation, the subjects themselves are essentially provincial in character and will be administered by the Provinces and mainly in accordance with provincial policy; that is to say, they have a closer affinity to those included in List II than to the exclusively federal subjects. At the same time, it is axiomatic that, if the concurrent legislative power of the Centre is to be effective in such circumstances, the normal rule must be that in case of conflict between a Central and a Provincial Act in the concurrent field, the former must prevail. But an unqualified provision to that effect would enable an active Centre to oust provincial jurisdiction entirely from the concurrent field, and would thus defeat one of the main purposes of the latter. We have already expressed our approval of the device adopted in the White Paper for the purpose of meeting this difficulty, under which the Governor-General, acting in his discretion, is made the arbiter between conflicting claims of Centre and Provinces. This in effect preserves in the limited sphere of the concurrent field the existing legislative relation between Centre and Provinces which excited the admiration of the Statutory Commission; but it seems to us impossible, consistently with our conception of Provincial Autonomy, to preserve it in its entirety. We think, however, that it would be a mistake to attempt to limit the powers of the Central Legislature in this field by any statutory definition of the purpose for which, or the conditions subject to which, they are to be used.

Relations between Centre and Provinces in the concurrent field

234 There are obvious attractions to those who wish to see the freedom and initiative of the Provinces as unfettered as possible in an attempt to ensure by provisions in the Constitution Act that the powers of the Centre in the concurrent field are to be capable of use 30 only where an all-India necessity is established, and where the enactment in question can appropriately be, and in fact is, applied to every Province We are clearly of opinion that such a restriction, apart from the prospect of litigation which it opens up, would tend to defeat the objects we have had in view in levising the List of con- 35 current subjects. For similar reasons we should strongly deprecate any provision requiring the prior assent of the Provinces, or of a majority of them, as a condition precedent to the excicise by the Centre of its powers in this field, or the condition suggested in the White Paper that the Centre is to be debaried from so using its 40 powers in respect of a concurrent subject as to impose financial obligation on the Provinces We recognise that, in practice, it will be impossible for the Centre to utilise its powers in the concurrent field without sitisfying itself in advance that the Governments to whose territories a projected measure will apply are, in fact, satisfied 45 with its provisions and are prepared in cases where it will throw extra burdens upon provincial resources to recommend to their own

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Legislatures the provision of the necessary supply, but we consider that the practical relationships which are to develop between Centre and Provinces in this limited field must be left to work themselves out by constitutional usage and the influence of public opinion, and that no useful purpose would be served by attempting to prescribe them by means of rigid legal sanctions and prohibitions theless, we regard it as essential to satisfactory relations between Centre and Provinces in this field that the Federal Government before initiating legislation of the kind which we are discussing should ascertain provincial opinion by calling into conference with 10 themselves representatives of the Governments concerned It follows that, while we fully accept the proposals in the White Paper for defining the constitutional duties and obligations of Provincial Confirments in relation to the execution of Federal Acts of all kinds, whether they relate to matters included in List I or to those 15 in List III, we think that they need qualification in so far as they are intended to empower the Federal Government to issue mandatory directions to the Provinces Such a power is clearly essential in relation to the federal field proper, but we do not think that it should extend to matters relating to the execution of federal laws in 20 the concurrent field At the same time we recommend that although no statutory limitation should be imposed upon the exercise by the Centre of its legislative powers in the concurrent field, the Governor-General should be given guidance in his Instrument of Instructions as to the manner in which he is to exercise the discretion which the 25 White Paper proposes to vest in him in relation to matters arising in the concurrent field

Proposal
that Acts
should not
be open to
challenge
after a specific
period

235 We observe with interest a proposal in the White Paper that, in order to minimize uncertainties of law and opportunites for lingation, provision should be made for limiting the period within which 30 the validity of an Act may be called in question on the ground that it was not within the competence of the Legislature which enacted it <sup>1</sup> We know of no precedent for a provision of this kind, though there are enactments in this country which make certain forms of subordinate or delegated legislation unchallengeable in the Courts 35

after a specified period. We are not disposed to reject it on that account; but, if it is adopted, we think that the period of limitation should be adequate and not less than five years.

236 Our observations have been hitherto directed solely to the legislative relations between the Federation and the Provinces. 40 legislative relations between the Federation and the Provinces. The relations between the Federation and the States in this sphere will between the Federal not, and cannot, be the same. The effect of the proposals in the Legislature White Paper is that, while every Act of the Federal Legislature and the regulating any subject which has been accepted by a State as a 45 federal subject will apply proprio vigore in that State as they will apply in a Province, a duty identical with that imposed upon

1 White Paper, Proposal 118.

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Provincial Governments being imposed upon the Ruler to secure that due effect is given in his territories to its provisions, yet this jurisdiction of the Federal Legislature in the States will not be exclusive. It will be competent for the States to exercise their 5 existing powers of legislation in relation to such a subject, with the proviso that, in case of conflict between a State law and a Federal law on a subject accepted by the State as federal, the latter will prevail. We understand that the States, who are free agents in this respect, are likely in the first instance to take their stand upon the 10 Federal List proper and to accept the jurisdiction of the Federal Legislature in nothing which is outside the boundaries of that List; but we hope that in course of time they may be willing to extend their accessions at least to certain of the items, such as Bankruptey and Insolvency, in the Concurrent List.

237. We desire to draw attention to certain points in connection Formal with the revised Lists of Subjects. We may observe in the first place that certain of the entries in List I as it appears in the White Paper List. are so framed as to provide for variation of treatment in relation to the States. The revised List is, however, framed in terms which 20 are appropriate to India as a whole, and makes no attempt to meet the case of States which might not be prepared to accept the whole subject without variation. This we are satisfied is the more con-

venient course, the natural medium for recording any variation from the general content of a federal subject, whether in respect of the 25 acceding States in general or of an individual State, being each Ruler's Instrument of Accession. Another general principle which has been observed in revising the Lists and which has involved a number of minor modifications is the desirability of defining every entry in terms appropriate to a legislative power and of omitting all

30 entries which are in essence descriptive of executive power. Such expressions as "control" and "regulation" have therefore been avoided; and we assume that the draftsman of the Constitution Bill will find it necessary to define in some appropriate manner, elsewhere in the Bill, the scope of the executive or administrative

35 authority of the Federal and of the Provincial Governments respectively. In any case we recommend, in consonance with what we have said in earlier paragraphs, that the Act should contain an express provision declaring the administration of subjects in List I to be (subject to the right of the Federal Legislature to devolve

• 10 any administrative powers for the purpose upon the Provincial Governments) a federal, and the administration of subjects in Lists II and III a provincial, function.

Alterations suggested in the entries relating to the defence of India. 238. The revised Lists also contain a number of changes of substance. Apart from a considerable revision of the language of the first five entries of List I, as they appear in the White Paper, 45 which collectively define the ambit of the reserved subject of Defence, the first entry, "the common defence of India in time of an

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emergency declared by the Governor-General" has been omitted entirely. The intention of this item was, we understand, to give the Federal Legislature (and, in consequence, the Governor-General for the purposes of his personal legislative power) extensive powers on the lines of the English Defence of the Realm Act. 5 Wc fully agree that it is essential that such a power should be vested in the Federal authorities, but we are of opinion that it should not be left to be deduced from a schedule of legislative powers, but should be the subject of an express provision in the body of the Act. We are informed that it was only by a 10 majority of one that five Judges of the High Court of Australia decided that the power to legislate for "defence" in the Commonwealth Constitution Act justified legislation on the lines of the Defence of the Realm Act; and the provision which we recommend in order to place this vital matter beyond doubt should make it 15 clear that the emergency power in question is not limited to "defence" in the sense of repelling external aggression, but that it covers internal disturbance also, and that, where an emergency has been declared by the Governor-General, the Federal Legislature may make on any subject laws which will override any laws which 20 conflict with them, the Governor-General's personal legislative power being of course co-extensive in this repect with the power of the Federal Legislature. As an additional safeguard we would require that every proposal for legislation in the exercise of this power should be subject to the previous consent of the Governor- 25 General. We recognise that the inclusion of internal disturbance (which should be defined in terms which will ensure that for this purpose it must be comparable in gravity to the repelling of external aggression | among the circumstances which, in an emergency, will enable the Governor-General to confer upon himself, or upon the 30 Federal Legislature, as the case may be, the power to invade the exclusively provincial sphere and to override provincial legislation within that sphere, may be criticized as a derogation from the general plan of Provincial Autonomy which we advocate; but in the absence of such a power we could not regard the Governor-General as 35 adequately armed to discharge the ultimate responsibility which rests upon him for the peace and tranquillity of the whole of India.

Other alterations in the Lista. 239. It would extend this chapter to an unreasonable length if we were to set out in detail all the changes which a revision of the three Lists has involved. We are the less willing to do so, because we 40 recognise that the revised Lists themselves will require further expert scrutiny before they are finally submitted to Parliament as part of the legislative proposals of His Majesty's Government. We think, however, that if the revised Lists are compared with the Lists in the White Paper, such changes as have been made, in 45 addition to those already mentioned will, for the most part, be found to speak for themselves.

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Redeting leve. 240. We assume that there will be a provision in the Constitution Act continuing in force (until amended hereafter) the whole body of

Item

existing Indian law. But it will clearly be necessary before the Act comes into force to redistribute all powers conferred by that 5 law so as to make them conform to the distribution of powers effected by the Constitution Act.

### THE REVISED LISTS

(The unbracketed figures represent the entries in the Lists set out in the White Paper; the figures in brackets represent the order in 10 which the revised entries should be shown).

## LIST I (FEDERAL)

	1		Omitted for reasons given above.
15	2	(1)	
			military and armed police maintained by Provincial Governments and armed forces maintained by the
			Rulers of Indian States), including the employment of
			those forces for the protection of the Provinces against
20			internal disturbance and for the execution and main- tenance of the laws of the Federation and the Provinces.
	3	(2)	His Majesty's naval, military and air force works.
	4	(3)	Local self-government in cantonment areas and the
0.5	_		regulation therein of house accommodation.
25	5 6	/40\	Omitted—has been combined with item 2.  The Benares Hindu University and the Aligarh Muslim
	0	(46)	University.
	7	(47)	.Ecclesiastical affairs, including European cemeteries.
	8	(4)	External affairs, including international agreements, but
30			with regard to future agreements relating to subjects
			within the exclusive jurisdiction of a unit, only so far
			as they have been made with the previous concurrence of that unit.
	9	(5)	
35	_	<b>(-</b> /	provincial migration, including in relation thereto
			regulation of foreigners in India.
	10	(6)	
	115	1	Extradition
	11B	(8)	Fugitive offenders.
			No. of the last
	T4		Page 137
	Item 12	(9)	(i) Construction of railways other than minor railways.
	12	(3)	(ii) Regulation of federal railways and regulation of other railways in respect of—
5			(a) maximum and minimum rates and fares;
•			(b) terminals.
			(c) safety;
			(d) routeing and interchangeability of traffic;
10			(e) responsibility as carriers.
10			(Definitions (to be inserted in the Act): "Railways"
			includes tramways. "Light and feeder railway"

means a railway not in physical connection with or of the same gauge as an adjacent railway extending beyond a single unit. "Minor railways" means light and feeder railways wholly within a unit. "Federal railways" includes all railways other than minor railways and railways owned by a State and managed by or on behalf of the Ruler of that State.)

13 (10) Air navigation and aircraft, including the regulation of aerodromes. Inland waterways passing through two or more units, including shipping and navigation thereon as regards mechanically propelled vessels, but not including water supplies, irrigation, canals, drainage, embankments, water storage or water power (12)Maritime shipping and navigation, including carriage of goods by sea Regulation of fisheries beyond territorial waters 16 (13)17 Omitted—has been combined with item 14 18 (14)Lighthouses (including their approaches), beacons, light- 30 ships and buoys 19 Port quarantine and manne hospitals (15)20 (16)Declaration and delimitation of major ports and constitution and powers of Port Authorities in such posts (17)21 Postal, telegraphic, telephone, wireless (including broad- 35 casting) and other like services and control of wireless Currency, comage and legal tender Public debt of the Federation (18)23 (19) 24 (20) Post Office Savings Bank (21)[Incorporation and regulation of] Corporations for the 40 purposes of the subjects in this list, Corporations having objects not confined to one unit, Banking, Insurance, Financial and Trading Corporations not being Co-operative Societies Page 138 Item Development of industrics in cases where such development is declared by or under federal law to be expedient in the public interest 27 (23)Cultivation and mannfacture of opium; sale of opium 5 for export 28A (24)Possession, storage and transport of petroleum 28B (25) Explosives (26)Arms and ammunition 30 (27)Copyright, inventions, designs, trade marks and mer- 10 chandise marks Transferred to List III (29)32 Cheques bills of exchange, promissory notes and other like instruments Omitted-see "Regulation of mechanically propelled 15 33 vehicles" in List III Import and export of commodities across the customs frontiers as defined by the Federal Legislature, duties of customs. 35 (48)Duties of excise on the manufacture and production of (49)tobacco and other articles except-(1) potable alcoholic liquors, (ii) toilet and medicinal preparations containing alcohol, Indian hemp, opium or other drugs or 25 narcotics, (iii) opium, Indian hemp, and other drugs and narcotics 37 (50)Taxes on the capital and the income (other than the agricultural capital and income) of companies. 38 Geological Survey of India. (34)Botanical Survey of India.

with the subjects in this List, but not including fees

to be paid in Courts.

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## LIST II (PROVINCIAL)

		PIST II (FROVINCIAL)	
Item			
1	(1)	Local self-government, including matters relating to the constitution and powers of municipal corporations, improvement trusts, district boards, mining settlements and other local authorities in the Province established for the purpose of local self-government	5
2	(2)	and village administration.  Hospitals and dispensaries, charities and charitable institutions in and for the Province.	10
3 4	(3) (16)	Public health and sanitation.  Pilgrimages other than pilgrimages beyond India.	
ŝ	(5)	Education.	
6	(e)	Public works, lands and buildings vested in or in the possession of the Crown for the purposes of the Province.	15
7	(7)	Compulsory acquisition of land.	
8	(9)	Roads, bridges, ferries, tunnels, ropeways, causeways, and other means of communication.	
9	(8)	Minor railways.	20
10		Included in item 9.	
11	(11)	Water supplies, irrigation and canals, drainage and embankments, water storage and water power.	
12	(22)	(a) assessment and collection of revenue; (b) maintenance of land records, survey for revenue	25
		purposes and records of rights;	
	(00)	(c) alienation of land revenue.	
13	(23)	Land tenures, including transfer and devolution of agricultural land; easements.	30
14	(24)	Relations of landlords and tenants and collection of rents.	
15	(25)	Courts of Wards and encumbered estates.	
16	(26)	Land improvement and agricultural loans.	
17	(27)	Colonization.	
18	(28)	Pensions payable by the Provincial Government or out of Provincial revenues.	35
19	<i>,</i>	Included in item 13.	
20	(29)	Agriculture, including research institutes, experimental and demonstration farms, introduction of improved methods, agricultural education, protection against	40
21	(30)	destructive pests and prevention of plant diseases.  Veterinary department, veterinary training, improvement of stock and prevention of animal diseases.	
		Page 141	
1tem	l .		
22	(13)	Fisheries.	
23	(34)	Co-operative societies.	
24	(35)	[Incorporation and regulation of] Corporations other	
QA =	1923	than those mentioned in List I.	5
	(36)	Trading, literary, scientific, religious and other societies and associations not being corporations.	
25 oc	(17)	Forests.	٠
26	(18)	Production, manufacture, possession, transport, purchase and sale of liquors, opium and other drugs and narcotics not covered by item 19 of List III.	10

- ,			[
	27	(19)	Duties of excise on the manufacture and production of—  (i) potable alcoholic liquors;
4-			(ii) toilet and medicinal preparations containing
15			alcohol, Indian hemp, opium or other drugs
			and narcotics;
	-00	400V	(iii) opium, narcotics, hemp, and other drugs.
	28	(39)	Administration of justice, including the constitution and
			organisation of all Courts and fees to be paid therein,
20		440	except the Federal Court and the Supreme Court.
	29	(40)	Procedure in Rent and Revenue Courts.
	30	(41)	Jurisdiction, powers and authority of all Courts, except
			the Federal Court and the Supreme Court, with respect
			to subjects in this List.
25	31	440	Transferred to List III.
	32	(42)	Fixing of rates of stamp duty in respect of instruments
			other than those mentioned in item 53 of List I.
	33		Transferred to List III.
	34	(37)	Registration of births and deaths.
30	35	(38)	Religious and charitable endowments.
	36	(43)	Mines and the development of mineral resources in the Province.
	37	(44)	Control of the production, supply and distribution of
			commodities.
35	38	(45)	Development of industries, except in so far as they are
			covered by item No. 26 in List I.
	39		Transferred to List III.
	40		Transferred to List III.
	41		Transferred to List III.
10	42	(46)	Gas.
	43	(47)	Smoke nuisances,
	44	(48)	Adulteration of foodstuffs and other articles.
	45	(49)	Weights and measures except standards of weight.
	46	(50)	Trade and commerce within the Province.
15	47		Transferred to List III.

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	Iten	a.	
	48	(12)	Ports except in so far as they are covered by item 20 of List I.
5	49	(10)	Inland waterways being wholly within a Province, including shipping and navigation thereon.
	50	(52)	Police (including railway and village police).
	51	(53)	Betting and gambling except State lotteries.
	52	(54)	Prevention of cruelty to animals.
	53	(55)	
10	54	(20)	Vehicles other than mechanically propelled vehicles.
	55	(21)	Dramatic performances and cinemas except sanction of cinematograph films for exhibition.
	56	(56)	Coroners.
	57	(57)	Criminal tribes.
15	58	(,	Transferred to List III.
	59	(58)	Prisons, reformatories, Borstal institutions and other institutions of a like nature.
	60	(59)	Prisoners.
	-61	(60)	Pounds and the prevention of cattle trespass.
20	62	(61)	Treasure trove.
	63	(62)	Libraries, museums and other similar institutions, con- trolled and financed by the Provincial Government.

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64	(63)	Conduct of elections to the including election offences and	Provincial Legit disputed electric	pslature, ons
65	(64)	Public Services in the Province a Service Commission		
66	(65)	Surcharges within such limits a Order in Council on federal i supertax, to be assessed on the companies) resident in the Pr	rates of income incomes of pers	tax and
67	(66)	Imposition of fees taxes cesses, with the subjects in this List of the forms specified in the	and of taxation	n in any
	(31)	Relief of the poor		a=
	3 (32)	l remployment		35
69	(33)	Health insurance and invalid and	d old-age pension	as
70	(51)	Money lenders	-43 13 17	
71	(4)	Burials and burial grounds cemeteries		_
72 73	(67)	Offences against laws on subjects Omitted	in this List	40
74	4001	Omitted		
75 76	(68) (70)	Statistics for the purpose of the s Generally any matter of a merely in the Province		
Iten		Page 143		
77	•	Omitted		
	1tems			
(a)	(14)	Innkeepers		
(b) (c)	(15) (69)	Markets and fairs Public debt of the Province.		5
		ANNEXURE		
Iten				
1 to		Omitted—already covered by the item 67	e entres in Lis	11— <i>see</i> 10
6	(1)	Capitation taxes		
7 8	(2) (3)	Duties in respect of succession to a Taxes on lands and buildings a and windows, sumptuary luxuries	mimals, boats,	
9	(4)	Taxes on trades, professions cal	lings and emplo	
10	(5)	Taxes on consumption, cesses into a local area, taxes on s on turn over, taxes on adve-	on the entry of	of goods
11 12	(6)	Taxes on agricultural incomes Omitted—see item 32 of List II		20
13	(7)	Taxes on entertainments, ami gambling	usements, betti	ng and
		LIST III (CONCURREN	T)	
1	(1)	Jurisdiction, powers and authors the Federal Court and the Supr		
2	(2)	to the subjects in this List Civil Procedure including the		
3	(3)	all matters now covered by the Evidence and oaths	Code of CIAN LL	30
4	(4)	Marriage and divorce		au
_	,	-		

45 (m)

(95)

5 (5) Age of majority and custody and guardianship of (6)Adoption. J5 Registration of deeds and documents. (8) The law relating to :-8a (a) Wills, intestacy and succession save as regards agricultural land. (b) Transfer of property (other than agricultural land). 40 (c) Trusts and trustees. (d) Contracts, including partnership. (e) Powers of Attorney. Carriers. (g) Arbitration. Page 144 Item (9)8в Bankruptcy and insolvency. 9 (13)Crimes other than offences against laws on subjects in List I or List II. 10 (14)Criminal Procedure, including all matters now covered by the Indian Code of Criminal Procedure. Newspapers, books and printing presses. (17)12 (18)Lunacy and lunatic asylums. (19)13 Regulation of the working of mines, but not including 10 mineral development. (20)Factories. 14 21 15 Employers' liability and workmen's compensation. (22 16 Trade Unions. (23) 17 Welfare of labour, including, in connection therewith, 15 provident funds. 18 (24)Industrial and labour disputes. (27 19 Poisons and dangerous drugs. (32) 20 The recovery in a Province of public demands (including arrears of land revenue and sums recoverable as 20 such) arising outside that Province. 21 (31)Legal, medical and other professions. 22 Transferred to List I. 23 Omitted. New items (28)The prevention of the extension from one Province to (a) another of infectious and contagious diseases or pests affecting men, animals or plants. (12)Administrators-General and official trustees. (26)Electricity. (25) 30 (d)Boilers. (16) European vagrancy. (29)The sanctioning of cinematograph films for exhibition. (15)Inter-provincial removal of prisoners with the consent of the Province. (30) 35 Mechanically propelled vehicles. (33)The recognition of laws, public Acts, records and judicial (1) proceedings. Law of non-judicial stamps, but not including the (10)(j)fixation of rates of duty. Actionable wrongs not relating to subjects in List I or (k)(11)List II. 70 (34)Imposition of fees, taxes, cesses and duties in connection with the subjects in this List, but not including fees to be paid in Courts.

Statistics for the purposes of the subjects in this List.

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## (2) FEDERAL FINANCE.

241. This subject falls naturally into two parts: first, the allocation of the sources of revenue between the Federation and the Units; and second, the additional expenditure involved by the proposed constitutional changes. We have had the advantage of a comprehensive and objective review of the facts and figures relating to both parts of the subject by Sir Malcolm Hailey, which has been printed among the Records of the Committee. We reproduce here from this document the figures of estimated revenue and expenditure of the Central and Provincial Governments for 1933—34, in order that it may be possible to view in proper perspective the various questions dealt with below.

Budget Estimates of Revenue and Expenditure of Central and Provincial Governments in 1933-34

	COUSTAINER	45 17 1333-3 <del>4</del>		
Central Revenue		Central Expenditure		
R	s. = £	Rs. = f		
	millions.	Crores, millions.		
Customs (net) 50.2		Postand Telegraphs (net) 0.61	0.46	
Income taxes (net) 17.2	1 12 91	Debt:		
Salt (net) 7.6	0 5.70	Interest (net) 8-97	6.73	
Other taxes (net) 0.6	0 0 45	Reduction of Debt. 6-89	5.17	
		Civil Administration 8.76	6-57	
Net tax revenue 75.68 5		(net).		
		Pensions (net) 3.02	2.26	
Opum (net) 0.6	3 0.47	Civil Works (net) 1.72	1 · 29	
Railways (net) No	l Nil	Defence Services (net) 46.20	34 . 65	
Currency and Mint (net) 1.1	1 0.83	Subvention to N.W.F.P. 1.00	0.75	
Payments from States 0.7	4 0.56	Miscellaneous (net) 0.74	0.55	
Total 78-1	6 58-62	Total 77.91	58.43	
Provincial Revenues		Provincial Expenditure		
Land Revenue 35.2	9 26.47	Land Revenue and Gen-		
Excise 14.85		eral Administration 14.86	11.14	
Stamps 12-40	9.30	Police 12.38	9.28	
Registration 1.14		Jails and Justice 7.66	5-75	
Scheduled Taxes . 0.4.		Debt 4 · 21	3.16	
	!	Pensions 5.08	3.81	
Total tax revenue 64.11	1 48-08	Education	8.85	
Forests (net) 0 · 6		Medical and Public	- 0-	
Irrigation (net) 0.46		Health 5.23	3.92	
Miscellaneous 11-3		Agriculture and Indus-		
N.W.F.P. subvention 1.00		tries 2.89	2-17	
		Civil Works 8.33	6-25	
Total 77.6	1 58-21	Miscellaneous. 7-34	5-51	
		Total 79.78	59.84	

## Allocation of Sources of Revenue between the Federation and the Federal Units

242. In any Federation the problem of the allocation of resources is necessarily one of difficulty, since two different authorities (the Government of the Federation and the Government of the Unity, each with independent powers, are raising money from the same body of taxpayers. The constitutional problem is simplified if it is possible to allocate separate fields of taxation to the two authorities.

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but the revenues derived from such a division, even where it is practicable, may not fit the economic and financial requirements of each party; neither do these requirements necessarily continue to bear a constant relation to each other, and yet it is difficult to devise 5 a variable allocation of resources. So far as we are aware, no entirely satisfactory solution of this problem has yet been found in any federal system.

243. So far as British India is concerned the problem is not a new The Though the separation of the resources of the Government of O India and the Provincial Governments under the existing Constitution is in legal form merely an act of statutory devolution, which can be varied by the Government of India and Parliament at any time, nevertheless from the practical financial point of view there is already in existence in British India a federal system of finance. 5 This system is fully described in the Report of the Statutory Commission. Determined to avoid the inconveniences which had already been experienced from a system of "doles" from the Centre to the Provinces or from a system of heads of revenue shared between the two parties, the authors of the present Constitution adopted an 20 almost completely rigid separation of the sources of revenue assigned respectively to the Centre and to the Provinces. From the point of view of expenditure, the essentials of the position are (and no change in this respect is to be expected) that the Provinces have an almost inexhaustible field for the development of social services, 15 while the demands upon the Centre, except in time of war or acote frontier trouble, are more constant in character. The Provinces have rarely had means adequate for a full development of their social needs, while the Centre, with taxation at a normal level, has no greater margin than is requisite in view of the vital necessity for 30 maintaining unimpaired both the efficiency of the defence services and the credit of the Government of India which rests fundamentally upon the credit of India as a whole, Centre and Provinces together.

244. Both Centre and Provinces have, however, been severely Its resu affected by the world economic depression; and the financial position 15 of both has been severely strained. Rates of taxation have had to be increased in all directions, and every department of government has had to submit to retrenchment; but the way in which the strain has been borne is a tribute to the essential soundness of the present financial system. Past experience of the existing system leads to 10 two conclusions on which there is general agreement: (a) that there are a few Provinces where the available sources of revenue are never likely to be sufficient to meet any reasonable standard of expenditure: and (b) that the existing division of heads of revenue between Centre and Provinces leaves the Centre with an undue share 45 of those heads which respond most readily to an improvement in economic conditions. This has led to a very strong claim by the provinces for a substantial share in the taxes on income. claim, as might be expected, has been pressed most vigorously

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by the more industrialised Provinces like Bombay and Bengal, especially as their relative position was not improved by the abolition of the contributions which at the date of the establishment of the present constitution were paid by the Provinces to the Centre and 5 were relatively larger in the case of the more completely agricultoral Provinces.

245. The subjects which will be directly administered and paid for by the Centre and by the British India Provinces respectively will not. if our recommendations are accepted, be materially changed under the new Constitution, and, but for the entry of the States into the 10 Federation, the problem of the allocation of resources could be resolved by reviewing and overhauling the existing system. The entry of the States however removes one very serious problem, The incidence of the sea customs duties is upon the consumers in the Indian States and the consumers in British India alike; the States 15 have no say under the present system in the fixing of the tariff. With the continued rise for many years past in the level of the import duties, the States have pressed more and more for the allocation to them of a share in the proceeds of these duties. There is of course another side to the picture in the increased cost of the defence 20 services, which is for the benefit of the States as well as for British India; but, nevertheless, the question was becoming one of formidable difficulty, and was recognised as such in the report of the Indian States Committee of 1928-29, presided over by Sir Harcourt Butler. With their entry into the Federation the States will take part in 25 the determination of the Indian tariff, and their claim to a separate share in the proceeds disappears. But if their entry removes this major problem, it introduces another, though less formidable. complication. It is obviously desirable that, so far as possible, all the Federal Units should contribute to the resources of the Federation 30 on a similar basis. Broadly speaking, no difficulty arises in the sphere of indirect taxation which constitutes some four-fifths of the Central revenues; the difficulty arises over direct taxation, that is to say, taxes on income. If the Federation retains the whole of taxes on income, as the Centre does at present, it would be natural to 35 require that the subjects of the federating States should also pay income tax and that the proceeds (or part thereof) should be made available for the federal fisc. The States have made it plain that they are not prepared to adopt any plan of this kind.

246. It will be seen therefore, from two different lines of approach, 40 that the most difficult question that arises in the problem of allocation is that of the treatment of taxes on income. In earlier discussions at the Round Table Conference a plan was evolved by which, in the main, all the taxes on income were to be assigned to the Provinces, the resulting deficit in the Federal Budget being 45 made up for the time being by contributions from the Provinces, which it was hoped could be gradually reduced over a prescribed period of years and would finally disappear, as new federal resources

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were developed. The position which would be likely to result from a plan of this kind was examined in India in 1932 by the Federal Finance Committee presided over by one of our own number. The Committee declared itself unable to assume the abolition of such provincial contributions within any period that could be foreseen; and this conclusion, and the objections felt to the reintroduction of provincial contributions, experience of which had not been too fortunate under the existing Constitution, led to the abandonment the Government of this scheme.

247. There is little doubt that from the economic point of view it 10 is desirable that the Provinces should, if it is practicable, share in the proceeds of taxes on income. There has been considerable discussion, since the abandonment of the plan just described, as to the amount of this share. If the problem is considered merely as one of striking a theoretically correct balance between the States 15 and British India, on the assumption that the States will not be

subject to the federal income tax, there are many factors to be taken into account. Some of the federal expenditure will be for British India purposes only, such as subsidies to deficit British India 20 Provinces; there has also been controversy on the question whether the service of part of the pre-Federation debt should not fall on British India alone; and further, part of the proceeds of taxes on income is derived from subjects of Indian States, e.g., holders of Indian Government securities and shareholders in British India 25 Companies. The States also make a contribution in kind to defence of which there is no counterpart in the Provinces of British India. It seems to us both unnecessary and undesirable to attempt any accurate balancing of these factors or to determine on a basis of this kind what share of the income tax could equitably be retained 30 by the Federation. It will be wiser to base the division upon the financial and economic needs of the Federation and the Units. Nor is it likely that any discquilibrium between British India and the States that might result from such a method of treatment would be of a serious character. The difficulty is rather that the 35 Federal Centre is unlikely, at least for some time to come, to be able to spare much, if anything, by way of fresh resources for the Provinces, apart from the pressing needs of deficit areas to which we refer below. But it is equally undesirable to leave the Provinces with no indication of the share which they may ultimately expect 40 when the strain of present economic difficulties becomes less severe. It is also necessary that any transfer should be gradual, if dislocation of both federal and provincial budgets is to be avoided.

248. The solution of this problem proposed in the White Paper may The V be briefly described as follows: Taxes on income derived from federal 45 sources, i.e., federal areas or emoluments of federal officers, will be permanently assigned to the Federation. Of the yield of the rest

<sup>1</sup> White Paper, Proposals 139, 141.

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of the normal taxes on income (except the corporation tax referred to later) a specified percentage (to be fixed by Order in Council at the last possible moment) is to be assigned to the Provinces. This percentage is to be not less than 50 per cent, nor more than 75 per 5 cent. Out of the sum so assigned to the Provinces the Federal Government will be entitled to retain an amount which will remain constant for three years and will thereafter be reduced gradually to zero over a further period of seven years, power being reserved to the Governor-General to suspend these reductions, if circumstances 10 made it necessary to do so. The Federal Government and Legislature would, in addition, be empowered to impose a surcharge on taxes on income, the proceeds of which would be devoted solely to federal purposes. We understand it to be implicit in this proposal that the power should only be exercisable in times of serious financial stress; 15 and when such surcharges are in operation the States would make contributions to the federal fisc, assessed on a predetermined basis, so as to make them a fair counterpart of the yield of the surcharges from British India. The conditions under which the States are ready to accept this proposal were explained in a statement made 20 to us on behalf of the Indian States Delegates1; and we agree that conditions of the kind mentioned are not unreasonable.

249. Some obvious criticisms can be made on this plan for dealing with the taxes on income. If a specified percentage of the yield of the property of the prop taxes on income is to be assigned to the Provinces, any alteration 25 in the rate of tax will affect both parties (Federation and Provinces),

though there may be only one which desires either an increase or a diminution in the yield. It may be suggested that the yield of a given basic rate should be assigned either to the Federation or the Provinces, the remainder going to the other. We are, however, informed that a plan of this kind would not fit well into the Indian income tax system, which differs considerably from the British. It is also said that the anomaly is more apparent than real, since, at least for many years to come, both Federation and Provinces will need as much money as can be obtained from taxes on income, and the fixing of the rate is likely to depend more on taxable capacity than on the precise budgetary position at any given moment of either

250 We agree that the percentage which is ultimately to be attained should be fixed as late as possible by Order in Council, but we see little or no prospect of the possibility of fixing a higher percentage than 50 per tent even as an ultimate objective, and there is an obvious difficulty in prescribing in advance, as the White Paper does, a time-table for the process of transfer, even though power is reserved to the Governor-General to suspend the process (or as we assume its initiation). The facts discussed below indicate that for some time to come the Centre is unlikely to be able to do much

<sup>1</sup> Minutes of Evidence, Q 8023

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more than find the funds necessary for the deficit Provinces, and that an early distribution of any substantial part of the taxes on income is improbable. We think that it would be an improvement if the periods of three and seven years, instead of being fixed by statute, were controlled by Order in Connoil (the Governor-General's power to suspend being of course retained)

251 The Joint Memorandum of the British-India Delegation recognises the difficulty of predetermining the various factors in this problem, and recommends an enquiry after three years. The Delegation do not state by what authority they consider that any decision consequent upon it should be taken, but perhaps intend that the decision should rest with the Federal Government. This does not seem fair to the Provinces

252 A further objection has been taken by some witnesses that it is not fair to Provinces such as Bengal and Bombay that the transfer of the provincial share of taxes on income should be delayed, and that so long as the Federation cannot spare the money, there should be some equitable form of contribution to the Federation from all the Provinces alike But any plan of this kind must inclutably lead in effect to a return to a system of provincial contributions which has been explored and abandoned. We do not recommend such a course

253 It must be admitted that the White Paper proposals for dealing with taxes on income present many difficulties, but the problem does not admit of any facile solution, and except for the suggestion made above, we do not ourselves feel able to propose an improved scheme. We should add that the actual method of distribution between the Provinces of any share in the taxes on income is a technical problem of some complexity. The report of the Federal Finance Committee suggests a useful line of approach, and we do not think that it is part of our duty to suggest a detailed scheme.

254 There are two further questions connected with taxes on income on which some comment is desirable. The White Paper proposes to treat specially the taxes on the income or capital of companies.

35 We understand this to refer to taxes of the nature of the existing Corporation Tax, which is a superfax on the profits of com-It is proposed that the Federation should retain the yield of this tax and that after ten years the tax should be extended to the States, a right being reserved to any State 40 which prefers that companies subject to the law of the State should not be directly taxed to pay itself to the federal fisc an equivalent lump sum contribution. We approve this proposal, although the details of the arrangement with the States seem likely to be complex.

<sup>2</sup> White Paper, Proposal 142,

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255 The White Paper also proposes that a Provincial Legislature Provincial should be empowered to impose a sircharge not exceeding 121 per cent, on the taxes levied on the personal income of persons resident in the Province, and to retain the proceeds for its own purposes.1 5 There is, we understand, a considerable difference of opinion in India on this suggestion. It might lead to differential rates of tax on the inhabitants of different Provinces, and although a limit would be set to the possible differences, this is in itself un-The rates of taxes on income are likely also to be desirable. 10 sufficiently high to make it difficult to increase the rate by way of surcharge, and to give the Provinces such a power might well nullify the emergency power of imposing a surcharge which we think it essential that the Federation should possess. On the other hand, the proposal would undoubtedly give an elasticity to 15 provincial revenues, which would be very desirable until the transfer of their share of the income tax is completed. But after balancing the considerations on either side, we are on the whole not in favour of it.

256 We come now to the question of deficit Provinces. The The des 20 problem of Sind differs from that of the others, since it is not expected that this Province will permanently remain a deficit area. Other Provinces, notably Orissa and Assam, are, so far as can be foreseen, areas in which there is no likelihood that revenue and expenditure can be made to balance under the general scheme of allocation of 25 resources, present or proposed; and in these cases it is intended that there shall be a fixed subvention from the federal revenues.\* Although it will no doubt be necessary to make it constitutionally possible after a period of years to vary the amount, we understand that the intention is, so far as possible, to make it a permanent and stable 30 contribution and thus to avoid the danger that the Province, instead of developing its resources, may be tempted to rely on expectations of extended federal assistance; and we agree. It is proposed that the Provinces to be assisted and the amounts of the subvention should be determined after further expert enquiry at as late a 35 date as possible. The case of the North West Frontier Province stands on a different footing. This Province is at present in receipt of a contribution of a crore of rupees (.75) annually from the Centre, the need for which arises mainly from special expenditure in the Province due to strategic considerations, though 40 not strictly to be classified as Defence expenditure. In this case it seems essential that there should be power to review the amount from time to time, though here also too frequent changes would be open to the objection to which we have referred above.

<sup>&</sup>lt;sup>1</sup> White Paper, Intro , para. 57; Appendix VI, List II (66).

<sup>1</sup> White Paper, Proposal 144.

<sup>1</sup> The figure in Drackets here and elsewhere in this section denotes the equivalent figure in millions sterling at 1s. 6d. the rupes.

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257. The White Paper proposals introduce two new features into the plan for the division of resources apart from the arrangements discussed above. Subject to the approval of the Governor-General in his discretion, power is given to the Federation to allot to the Federal Units (and not merely to the Provinces) a share of the yield of 5 salt duties and of excise duties, other than those specifically assigned to the Provinces, and also of export duties.1 We understand that the main purpose of this provision in relation to salt duties and excises is to make the financial scheme more elastic in the interest of future developments; and it is very pro-bable that a power to assign a share to the Units may facilitate the introduction of a new tax. With this desire to avoid too great a rigidity in the plan of allocation we agree. The particular instance of export duties requires special mention, since it is proposed in the case of the jute export duty that it should be obligatory to 15 assign at least one-half of the proceeds to the producing units. We understand that this proposal is made largely in the interests of Bengal, which bas undoubtedly suffered severely under the existing plan of allocation; and the circumstances are so special as, in our 20 opinion, to justify special treatment.

258. Another feature in the scheme is a category of taxes (of which railway terminal taxes, if imposed, would probably become by far the most important) in which the power to impose the tax is vested solely in the Federation, though the proceeds would be distributed to the Provinces, subject to the right of the Federation to 25 impose a surcharge for federal purposes. We can well understand that in cases where uniformity in the rate of tax, or central administration is essential, machinery of this kind may be desirable, even though no part of the proceeds is retained for the Centre.

259. The fact that the Federal Units either will, or may, share in the 30 yield from certain federal taxes implies that the Federal Budget cannot be the concern of the Federal Government and Legislature alone. This may result in some blurring of responsibility, and from the point of view of constitutional principle is open to objection; but we see no escape from it. In order to bring about mutual consultation between Federation and Units in matters of this kind, the White Paper proposes that federal legislation upon them should require the prior assent of the Governor-General, to be given only after consultation with both the Federal and the Governments of the Units. We are doubtful whether a statutory obligation to 40 consult the Units may not give rise to difficulties, and we see some advantage in directing the Governor-General in his Instrument of Instructions to ascertain the views of the Units by the method which appears to him best suited to the circumstances of the

White Paper, Proposal 137.
White Paper, Proposal 138.
White Paper, Proposal 140.

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particular case. On the other hand, a suggestion has been made for an entirely different solution of the problem, and that all Central receipts which are to go in aid of provincial revenues should be paid into a special Provincial Fund to be administered for the benefit of the Provinces by the Governors' General on the advice of a statutory Inter-Provincial Council representing the Provincial Governments We are disposed to think that this would tend to undermine the independence of the

Provinces, and the administration of such a fund would present serious difficulties. We prefer not to deal with the problem of distribution in this manner, and to leave the methods of consultation between Centre and the Units to be determined by convention and usage rather than by rigid statutory provisions.

260. The entry of the States into Federation, apart from the major Financial questions referred to above, involves some complicated financial adjustments adjustments, mainly in respect of tributes and ceded territories; Federation but these, though of importance to individual States, do not fundamentally affect the federal finance scheme as a whole. They have been exhaustively examined in the Report of the Indian States Enquiry Committee, which was also presided over by one of our members. We do not think it necessary to review the intricate adjustments there discussed, and it is sufficient to say that we endorse the main principles on which the Report is based, and in particular the gradual abolition over a period of years (corresponding to the period proposed for the assignment to the Provinces of a share of the taxes on income) of any contribution paid by a State to the Crown which is in excess of the value of the immunities which it enjoys.

261. Of the problems discussed in the Indian States Enquiry Committee's Report, the most difficult and serious is that of the maritime manner States in relation to sea customs. The present position, which varies between one State and another, is fully explained in the Report; and we understand that at the moment questions of importance are at issue between the Government of India and some of i these States on this subject. We think it most desirable that these difficulties should have been resolved before the Federation comes into being. The general principle which we should like to see applied in the case of the maritime States which have a right to levy sea customs is that they should be allowed to retain only so ) much of the customs duties which they collect as is properly attributable to dutiable goods consumed in their own State; but we recognise that treaty rights may not make it possible in all cases to attain this ideal. But if insistence upon treaty or other rights in any particular case makes such an arrangement (perhaps with i certain adjustments or modification) impossible, then it seem to us that the question will have to be senously considered whether the State could properly be admitted to the Federal system. It is

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unnecessary to emphasize the importance of securing that there is a genuine uniformity in the rates of customs duties levied respectively at State ports and at the ports of British India.

262. Before leaving this part of the subject of federal finance, Borrowing 5 reference should be made to the arrangements proposed for the regulation and co-ordination of federal and provincial borrowing. The proposals in the White Paper on the subject seem to us acceptable, subject to one additional provision. A Provincial Government will be empowered to borrow directly from the Federal Government, or 0 itself to raise a loan, though the latter will require the sanction of the Federal Government if the Province is already in debt to the Centre. We think that this is right; but it puts great power in the hands of the Federal Ministry, who might, by refusing the application of a Province or by insisting upon unreasonable conditions, assume 5 the right of controlling the general policy of a Province in a manner which we do not think was contemplated. In these circumstances, it seems to us that the ultimate decision whether consent

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has been unreasonably withheld in any instance should rest with the Governor-General in his discretion

## The additional expenditure involved by the proposed constitutional changes

263 We have been furnished with an estimate of the new overhead charges which would result from the adoption of the Constitution proposed in the White Paper, that is to say, the additional expenditure required by reason (inter alia) of an increase in the size of the Legislatures and electorates, or the establishment of the Federal Court These would amount to 2 crore (.56) per annum, attributable to the establishment of Provincial Autonomy, and another 2 crore (56) per annum, attributable to the establishment of the Federation. We understand that these would be the only fresh burdens imposed upon the taxpayers of India as a direct result of the constitutional changes The amount, under present financial conditions, is by no means negligible, but is not of very serious dimensions There are, however, apart from the new overhead charges, certain other factors affecting the financial position which it is necessary to pass in neview. The most important of these is the separation of Burma, and although this will not in itself involve a financial loss to the taxpayers of India and of Burma considered as a whole, the revenues of India will suffer a loss estimated to be possibly as much as 3 crores (2.2) a year, less the yield of any revenue duties on imports from Burma which may be introduced from the date of separation

264 The next most considerable adjustment is that due to the separation of Sind. It is estimated that there will be an initial deficit in Sind of about  $\frac{3}{2}$  crose (.56) a year, but that this will gradually diminish and be ultimately extinguished over a period of

<sup>1</sup> White Paper, Proposals 148, 149

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some fifteen years, by the end of which time it is believed that the agricultural developments connected with the Sukkur Barrage scheme will be complete. If Sind were not constituted a separate Province this deficit would fall to be met from Bombay revenues, except for a small sum of about 10 lakhs (07), the estimated cost of new over head charges (this sum is included in the total estimate of new overhead charges mentioned above). It is proposed that a subvention should be given from federal revenues to Sind, of a prescribed but gradually diminishing amount. Here again, except for the 10 lakhs already mentioned, there is no additional burden imposed upon the taxpayers of India as a whole, but the relief given to Bombay, which is by no means unneeded, will impose some additional strain on federal revenues.

265 The subventions to other deficit Provinces also react on federal finance, but we understand that the problem is one which it would have been necessary to face before long under the existing Constitution, since it is clearly impossible to allow the continued accumulation of deficits by a Province, if over a number of years it is beyond its power within the resources assigned to it to balance its expenditure and revenue. Special reference must be made to the case of Orissa. This will undoubtedly be a deficit area and will require a subvention of something like 30 lakhs (·22) a year, but of this only about 15 lakhs (·11) a year, which is the estimate for new overhead charges, involves any additional burden on federal revenues and has already been included in the total figure for new overhead charges referred to above. The balance would in effect have had

to be provided by subvention from the Centre even if a new Province of Orissa were not constituted. The existing Province of Bihar and Orissa is faced with serious financial difficulties, aggravated by the 30 recent earthquake, and the separation of Orissa only means that the new Province will receive the subvention which would otherwise have come to it indirectly through the Government of Bihar and It will be an advantage to the Government of Bihar to be free of the administration of a deficit area which is distinct from the 35 rest of the Province, with which communication is difficult, and whose

problems are different from those which confront Bihar 266 The factors above mentioned comeinto play on the inauguration Cost of adof Provincial Autonomy The only fresh factor, apart from the new with the

overhead charges of 1 crore (.56) a year, which is introduced by States 40 Federation itself is the proposed financial adjustment with the States to which we have already referred and which it is suggested shall be extended over a period of years. This will ultimately involve a net loss to federal revenues of something less than 1 crore (75) per annum

267 The general conclusion therefore is that though no formidable General new financial burden would be thrown on the taxpayers of India as a whole as a direct result of the constitutional change proposed, the

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necessity for giving greater elasticity to provincial resources, the subventions to the deficit Provinces, and also the separation of Burma, will impose a further strain on the finances at the Centre India is still suffering from the effects of the general 5 financial depression, and the low level of agricultural prices has been and still is a very formidable problem. But the state of Indian finance reflects great credit on those responsible for its administration, and the storm is being weathered more successfully than in most other countries Economic recovery would no doubt, as in 10 the past, produce speedily a very marked improvement in the situation; but at the moment special emergency taxation and special economies are still in force, and little more can be done than make both ends meet, though a beginning has been made in the present year towards easing provincial difficulties by a central grant 15 to the jute producing Provinces.

268 It has been argued in some quarters that constitutional change. The should be postponed until the financial horizon is clearer, but the situation in additional difficulties attributable to the change (and such as they relation to are they relate mainly to Provincial Antonomy and not to Federa-20 tion) are hut a small part of a financial problem which has in any changes. event to he faced, and is, we hope and believe, in process of solution, No doubt before the new Constitution actually comes into operation His Majesty's Government will review the financial position and inform Parliament how the matter stands It is suggested in the 25 White Paper that at the last possible date there should be a financial enquiry for settling certain details, such as the amount of the subventions to the deficit Provinces 1 This seems to us a suitable procedure, hut we do not conceive, nor do we understand that it is intended, that any such expert body could he charged with the 30 duty of deciding whether the position was such that the new Constitution could be inaugurated without thereby aggravating

White Paper, Introd, para 60

a direct assurance from His Majesty's Government

the financial difficulties to a dangerous extent On this point, as we have said. Parliament must at the appropriate time receive

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## (3) THE INDIAN PUBLIC SERVICES

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269. The problem of the Public Services in India and their future under a system of responsible government is one to which we have given prolonged and anxious consideration The grant of responsible government to a British possession has indeed always been accompamed by conditions designed to protect the interests of those who have served the community under the old order and who may not desire to serve under the new, but if, as we believe, the men who are now giving service to India will still be willing to put their abilities and experience at ber disposal and to co-operate with those 10 who may be called on to guide her destinies bereafter, it is equally necessary that fair and just conditions should be secured to them This does not imply any doubt or suspicion as to the treatment which they are likely to receive under the new Constitution, but, since m India the whole machinery of government depends so greatly 15 upon the efficiency and contentment of the Public Services as a whole, especially during a period of transition, it is a matter in which no room should be left for doubt It is not because he expects his bouse to be burned down that a prudent man insures against fire He adopts an ordinary business precaution and his action in doing so 20 is not to be construed as a reflection either upon his neighbours' integrity or his own.

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270 The United Kingdom no less than India owes an incalculable debt to those who have given of their best in the Indian Public Services, and the obligation must be honoured to the full—But the 25 question has another and scarcely less important aspect, for we are convinced that India for a long time to come will not be able to dispense with a strong British element in the Services, and the conditions of service must be such as to attract and bold the best type of man. So long as the British element is retained, Parliament, in the interests of India as well as of this country may rightly require not only that the Services are given all reasonable security but that none is deterred from entering them by apprehensions as to his future prospects and career.

## Present Organisation and Recruitment

The Indian Civil Services 271 The Civil Services in India are classified in three main divisions (1) the All-India Services, (2) the Provincial Services, and (3) the Central Services. The All-India Services, though they work no less than the Provincial Services under the Provincial Government, are all appointed by the Secretary of State, and be is 40 the final authority for the maintenance of their rights. Each All-India Service is a single Service and its members are liable to serve anywhere in India, but unless transferred to service under the Central Government, the whole of their career lies ordinarily in the Province to which they are assigned on their first appointment. 45

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Indu. Services. 272 The All-India Services consist of the Indian Civil Service; the Police, the Forest Service, the Service of Engineers, the Medical Service (Civil), the Educational Service, the Agricultural Service and the Veterinary Service Recruitment however by the Secretary of State to the Buildings and Roads Branch of the Service of Engineers to the Educational Service, the Agricultural Service and the Veterinary Service, ceased in 1924 on the recommendation of the Lee

Commission The composition and total strength of these Services on 1st January, 1933, were as follows -

10	1	2	3	4
		Europeans	Indians	Total
	Civil Service .	819	478	1.297
	Police	505	152	6651
	Forest Service	203	96	299
15 Service of Engineers Medical Service (Civil)	Service of Engineers	304	292	596
	200	98	298	
	Educational Service .	96	79	175
	Agricultural Service	46	30	76
	Veterinary Service	20	2	22
20				
		2,193	1 227	3,428

273 The Provincial Services (in the sense in which the expression is ordinarily used, which excludes not only the members of All-India Service Services working in the Province, but also the numerous subordinate 25 Services) are, and always have been, almost entirely Indian in composition, and cover the whole field of provincial civil administration in the middle grades Appointment to these Services are made by the Provincial Governments who, broadly speaking, control their conditions of service, and show an increasing tendency to 30 restrict their recruitment to candidates from the Province In many branches of the administration members of All-India and Provincial Services work side by side though the higher posts are usually filled by the former

274 The Central Services are concerned with matters under the The Central Services 35 direct control of the Central Government Apart from the Central Secretariat, the more important of these Services are the Railway Services, the Indian Posts and Telegraph Service and the Imperial Customs Service To some of these the Secretary of State makes appointments, but in the great majority of cases their members 40 are appointed and controlled by the Government of India, and if these Services are taken as a whole Indians out-number Europeans even in the higher grades, while, with the exception of the railways, the middle and lower grades may be said to be wholly Indian The Anglo-Indian community has always furnished a large number 45 of recruits to the Central Services, especially the Railways, the Posts and Telegraphs, and the Imperial Customs Service

1 Including 8 officers who had not been classified in either category

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## Rights of present members of the Public Services

275 In considering the rights and safeguards proposed in the White Rights of Paper for personnel already in the Services at the date when the members Constitution Act comes into force it will be convenient first of all 5 to take the rights and safeguards applicable to all personnel, secondly, those applicable to officers appointed by the Secretary of State, and thirdly, those applicable to officers appointed by other authorities

overnor-General and on each of the Provincial Governors for Safeguards applicable to all 10 Governor-General and on each of the Provincial Governors for the securing to members of the Public Services of any rights provided for them by the Constitution Act and the safeguarding of the special responsibility expressed in such wide terms, Governor to and hold that it should extend only to the rights given by the Con-General and Governor General and Governor to the rights given by the Con-Gen stitution Act itself It has been explained to us that the purpose Governors

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of the wider definition is to secure to the Services equitable and reasonable treatment in essential matters not covered specifically by statute. For example, it has long been the settled policy of Government that suitable medical attendance should be available to members of the Services and their families, though there is nothing to that effect in the existing Act or in the rules made under it. We agree that, in the circumstances, something more than "rights" is required, and we must leave it to the draftsman to decide whether "legitimate interests" is sufficient to cover the whole field which, we think, ought to be covered.

277. Protection against dismissal by any authority subordinate to the authority by whom he was appointed is secured to every member of the public service by the present Government of India Act, and a statutory rule provides that he shall not be dismissed or reduced without being given formal notice of any charge made against him and an opportunity of defending himself. Provisions on the same lines should obviously find a place in the new Constitution.<sup>1</sup>

278. The White Paper proposes that there shall be a full indemnity against civil and criminal proceedings in respect of all acts before the commencement of the Constitution Act done in good faith and done or purported to be done in the execution of duty.\* In view of threats which have been made in certain quarters, especially against the Police, we think that it is justifiable to give this measure of protection to men who have done no more than their duty in very difficult and trying circumstances. But we think that the certificate by the Governor-General or Governor, as the case may be, ought to be made conclusive on the question of good faith.

White Paper, Proposal 181. White Paper, Proposal 180.

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279. In addition to the rights and safeguards common to all members of the Public Services, it is proposed that there shall be secured to every officer appointed by the Secretary of State all service rights possessed by him at the date of the commencement of the Constitution Act or a right to such compensation for the loss of any of them as the Secretary of State may consider just and equitable. A list of the existing service rights are set out in Part I of Appendix VII of the White Paper. Some of them are conferred by the present Government of India Act and could only be modified or abolished by an amending Act; others are embodied in statutory rules made by the Secretary of State in Council. As things stand at present the latter could no doubt be taken away or modified at any time by the same authority; but the whole body of service rights from whatever source derived, may properly he regarded as forming a single code, which the members of the All-India Services now serving may equitably claim should not be varied (at least without a right of compensation) to their disadvantage, and we concur with the White Paper proposal which we are glad to observe had the approval of the Services Sub-Committee of the First Round Table Conference.

280. In addition to the provision for compensation for the loss of service rights, it is proposed that the Secretary of State should be empowered to award compensation in any other case in which he considers it to be just and equitable that compensation should be awarded.<sup>8</sup> This is no doubt a very wide and general power; but it is impossible to forsee and provide in a statute against all the contingencies that may arise in the administration of a great Service

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and we do not, therefore, dissent from the proposal. The Secretary of State assisted by his Advisers' may be trusted to preserve a 30 reasonable balance between the interests of the Services on the one hand and those of Indian revenues on the other.

281. We have examined with particular care in this connection the further externation suggestions made to us both orally and in writing by the various Service Associations, but have come to the conclusion that no necessary. 35 further measures of protection are required. We see no advantage. for example, in requiring the concurrence of the Governor to the personnel of the Committees of Enquiry into the conduct of officers. Nor do we consider that a case has been made out for resuming to the Secretary of State the detailed regulation for his own Services of 40 travelling and compensatory allowances, which are, and have long been, regulated by the authorities in India. In the discharge of his special responsibility for securing the legitimate interests of the Services as a whole, the Governor would be bound to satisfy himself

<sup>1</sup> White Paper, Proposal 182. <sup>8</sup> Itya. <sup>9</sup> Injea, para 382.

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that a Committee of Enquiry into an officer's conduct was so constituted as to ensure a fair hearing; and similarly that travelling allowances are on an adequate scale.

282. We may point out that among the conditions of service which Summary of 5 will be secured to all serving officers appointed by the Secretary of important State, if our recommendations are accepted, are the following:— State, if our recommendations are accepted, are the following:

(I) a right of complaint to the Governor or Governor-General against any order from an official superior affecting his conditions of service,

(2) a right to the concurrence of the Governor or Governor-General to any order of posting or to any order affecting emoluments or pensions, and any order of formal censure;

(3) a right of appeal to the Secretary of State against orders passed by an authority in India-

 (a) of censure or community.
 (b) affecting disadvantageously his conditions of service, and (c) terminating his employment before the age of superannuation :

(4) regulation of his conditions of service (including the posts to be held) by the Secretary of State, who will be assisted in his task by a body of Advisers, of whom at least one-half will have. held office for at least ten years under the Crown in India:

(5) the exemption of all sums payable to him or to his dependants from the vote of either Chamber of the Legislatures. For contingencies not susceptible of statutory definition, the special responsibility of the Governor-General and Governors, and the control which the Secretary of State and his Advisers will exercise over the conditions of service of officers appointed by the Secretary of State, will in our opinion afford a sufficient, and, indeed, the only 30 possible, protection. There is a point in every system of administration where some authority must have discretion to deal with such contingencies, and must be left to deal with them in an equitable

283. The power to regulate the conditions of service of officers not Officers 35 appointed by the Secretary of State has already been delegated to otherwise the Government of India in the case of the Central Services and to than by the Provincial Governments in the case of the Provincial Services but State.

of pervice.

without prejudice to certain rights existing at the time of delegation. The continuance in full of these rights is secured under the White Paper proposals 1

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ence vaces 284 Although this chapter is mainly concerned with the Civil Services, we think it right to mention the position of members of the Defence Services as a whole, including not only the officers,

White Paper Proposals 191-194

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non-commissioned officers and men of the Defence Forces in India but also the corresponding grades of civil officials whose work lies within the sphere of Defence and who are paid from They are clearly entitled to the same kind Defence estimates of rights and protection as they now enjoy as regards their 5 service conditions, although the protection need not necessarily be provided in precisely the same form as that proposed for members of the Civil Services, since Defence personnel will not be affected by the constitutional changes in precisely the same way as the Civil Services are likely to be affected Nevertheless, their rights should 10 not be left in doubt Their pay and pensions would be included under the head of expenditure required for the reserved Department of Defence, and as such would not be submitted to the vote of the Legislature There should be no room for misunderstanding on this point 15

#### Future Recruitment to the Public Services

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285 We have found the problem of the future recruitment of the two principal administrative services in India, the Indian Civil Service and the Indian Police, among the most difficult of those with which we have had to deal The appointing authority must necessarily 20 control the main conditions of service, and if control remains with the Secretary of State, there will to that extent be a derogation from the powers which an autonomous Province might expect and claim to exercise over the officers who are working under it Such a derogation is inevitable in the case of officers recruited by the 25 Secretary of State before the establishment of the new Constitution, but it was urged before us and has been again emphasised by the British-India Delegation in their Joint Memorandum that future recruitment by the Secretary of State of officers who serve a Provincial Government is incompatible with Provincial Autonomy, 30 and that the All-India Services ought henceforth to be organised on a provincial basis and recruited and controlled exclusively by the Provincial Governments

entingice of ecruit ent by cretary of ate commended. 286 We are very sensible of the logical force of this argument, and in the case of most of the All-India services, we fully accept it, 35 subject to certain qualifications to which we refer hereafter. But the functions performed by members of the Indian Civil Service and the Indian Police are so essential to the general administration of the country, and the need therefore for maintaining a supply of recruits, European and Indian, of the highest quality is so vital 40 that we could not view without grave apprehension an abrupt change in the system of recruitment simultaneously with the introduction of fundamental changes in the system of government. It is of the first importance that in the early days of the new order, and indeed until the course of events in the future can be more clearly foreseen, 45 the new constitution should not be exposed to risk and hazard by a radical change in the system which has for so many generations

## Page 163

produced men of the right calibre. All the information which we have had satisfies us that in the present circumstances only the existing system of recruitment is likely to attract the type of officer required, and we have come to the conclusion, as proposed in the 5 White Paper, that recruitment by the Secretary of State both to the Indian Civil Service and the Indian Police must continue for the present, and that the control of their conditions of service must remain in his hands. We have considered, but have felt obliged to reject, the possible alternative of recruitment by the Governor-General in his 10 discretion. The change in that case might no doubt be represented as one of form rather than of substance, since the Governor-General would be acting under the directions of the Secretary of State; but we are satisfied that the psychological effect at this juncture upon potential recruits would be such as to make the suggestion quite 15 unacceptable.

287. We recognise that the recommendation which we have felt it Position our duty to make is one which may not be welcome to Indian opinion. We desire therefore to make it clear that it is not intended to be a in light of permanent and final solution of this difficult question. Our aim, as

20 we have already said, is to ensure that the new constitutional machinery shall not be exposed during a critical period to the risks implicit in a change of system. We observe in the White Paper a proposal that at the expiration of five years from the commencement of the Constitution Act an enquiry should be held into the

25 question of future recruitment for these two Services, the decision on the results of the enquiry (with which it is intended that the Governments in India shall be associated) resting with His Majesty's Government, subject to the approval of both Houses of Parliament. We endorse the principle that the whole matter should be the subject

30 of a further enquiry at a later date; but past experience leads us to doubt the wisdom of fixing a definite and unalterable date for the holding of an enquiry of this kind. We agree that no useful purpose would be served by an enquiry before the expiration of five years; but we think it must be left to the Government of the day, in the

35 light of the then existing circumstances, to determine whether after that period the time has arrived for such an enquiry. It may be said that this is to postpone the final determination of the question to an indefinite future, but this is by no means our intention. We hope that the situation will have become so far clarified within five years

40 from the establishment of Provincial Autonomy that an enquiry may then be found of advantage; but where so much is difficult and perplexing it would be wrong to tic in advance the hands of those on whom the responsibility will rest for coming to a decision. Nor must it be assumed that such an enquiry will be merely a formal prelude

45 to a change of system. It will furnish the information on which an ultimate decision can be based, but we do not desire to anticipate

White Paper, Proposal 183.
White Paper, Proposal 189.

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or prejudice the final conclusion. It seems to us that the enquiry would be most conveniently made by a small body of administrative experts, who (though it is impossible at this stage to formulate any precise a terms of reference) might be invited to consider (I) whether the 5 Indian Civil Service or the Indian Police, or both, should continue to be recruited on an All-India basis or be replaced in any particular Province or in all Provinces by an exclusively provincial Service;

and (2) if recruitment is to continue on an All-India basis, by what authority shall recruitment be made and what shall be the future conditions of service.

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288. Under existing arrangements there is no direct recruitment for the Indian Medical Service (Civil). Vacancies are filled from among officers appointed to the Indian Medical Service who have had a period of military duty. We note the view expressed in the Report of the Services Sub-Committee of the first Round Table Conference that 15 there should in future be no Civil Branch of the Indian Medical Service, and that the Civil Medical Service should be recruited through the Public Services Commissions. The Sub-Committee however added that the Governments and Public Services Commissions in India should bear in mind the requirements of the 20 Army and of British officials in India, and should take steps to recruit an adequate number of European doctors to their respective Medical Services and to offer such salaries as would attract a good type of recruit. We are however convinced on the information supplied to us that the continuance of the Civil Branch of the 25 Indian Medical Service will provide the only satisfactory method of meeting the requirements of the War Reserve and of European members of the Civil Services, and that it will be necessary for the Sccretary of State to retain the power which he at present possesses (although medical matters have since 1920 been under the control 30 of Ministers) to require the Provinces to employ a specified number of Indian Medical Service officers. In making these recommendations we have not been unmindful of the natural desire of the Provinces to develop Medical Services entirely under their own control. But the requirements of the Army and of the Civil 35 Services have an over-riding claim.

289. The present position is that recruitment of European personnel to the Superior Railway Services is divided between the Secretary of State in Council and the High Commissioner for India. The former makes all first appointments of persons of non-Asiatic domicile 40 to the Indian Railway Service of Engineers, Transportation (Traffic) and Commercial Departments and Transportation (Power) and Mechanical Engineering Departments; and the latter various specialist appointments such as Bridge, Signal and Electrical Engineers, Works Managers and Medical Officers; and also Engineers 45 to fill temporary posts.

Future

290. Under the ratios recommended by the Lee Commission in 1924, 25 per cent. only of the total direct appointments to the Superior

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Railway Services is British, but the full effect of the corresponding ratio of Indian appointments will not be apparent for some years, as the great majority of the higher posts will continue to be filled by officers appointed to the Service before 1924. We recommend that the existing ratio of British recruitment should be continued 5 for the present and should include a due proportion of Royal Engineer officers. We think however that the new Railway Authority should, in the future, appoint British recruits. The Railway Authority will, by its constitution, be a strong and independent body, interested solely in the efficiency of the Railways, and able to 10 secure for its personnel satisfactory conditions of service; moreover the policy of the Board in relation to recruitment will be subject to the directions of the Governor-General whenever in the opinion of the latter the interests of defence or his special responsibilities are involved.

291. We approve the proposal in the White Paper that the Secretary of State should continue to make appointments to the Ecclesiastical Department. Recruitment to the Political Department is indirect, vacancies being filled by transfers from the Indian Army and the 20 Civil Service (mainly the Indian Civil Service) and, to a small extent by the promotion of subordinate political officers. The Governor-General approves transfers from the Indian Civil Service and the Indian Army, transfer from other All-India Services and promotions from the subordinate Services are approved by the Secretary

25 of State on the recommendation of the Governor-General.

The Ecclesiastical

292. The Statutory Commission made no specific recommendations Political for the future organisation and recruitment of the Political Department, of which at present the Governor-General himself holds the portfolio. Its total strength on 1st October, 1933, was 108 posts. 30 These include on the External side the secretariat, district and judicial appointments in the North-West Prontier Province and Baluchistan, as well as the political agencies in tribal territory; political agencies on the Persian Gulf and a proportion of consular appointments in Persia; the civil administration of Aden and such 35 appointments as those at the Legations in Afghanistan and Nepal and the Consulate-General at Kashgar. On the Internal side they include the appointments to political agencies and residencies through which the relations of the Crown with the Indian States are conducted; and the civil administration of the Chief Com-40 missioner's Provinces of Coorg and Ajmer Merwara, and of the assigned tract of Bangalore and other British cantonment areas in the Indian States.

Department posts.

293. The White Paper contemplates that after the commencement Future of the Constitution Act, when the Governor-General assumes responsi-45 bility in his other capacity for conducting the relations of the Crown with the Indian States in matters not accepted as federal

1 White Paper, Proposal 183.

#### **Page 166**

by their Rulers in their Instruments of Accession, it may, for political reasons, be found desirable to make the duties of political officers in the Indian States interchangeable with those of political officers employed by the Governor-General in the Reserved Department of 5 External Affairs. We accept the view that there is no immediate need to divide, and recruit separately, the personnel of the two Departments. Responsibility for recruitment to the political side of the Department will remain with the Secretary of State. For the time being there may be practical convenience in filling appointments in 10 that Department by seconding officers from the Department of External Affairs, more especially as the number of posts in either Department is comparatively small and the variety of functions assigned to them makes it desirable that the field of recruitment should be a wide one. Officers of the Indian Army and Members of 15 the Indian Civil Service appointed to the Department by the Governor-General, and other officers appointed by the Sccretary of State, would enjoy the same measure of protection as we recommend should be accorded to officers appointed to the Services by the Secretary of State.

294. Since 1924 the Forests in Bombay and Burma have been The Forest administered by a responsible Minister, and under Provincial Autonomy this will in future be the case in all Provinces. We

emphasise the necessity for co-ordinated research in all forestry matters, and we regard it as essential that the Central Institute at Dehra Dun for Forest Research should be maintained. But it is 25 not only in research that co-ordination of effort between the different Provinces is, and must continue to be, important. Each Province should know what the other Provinces are doing in such administrative matters as the preparation and carrying out of working plans. At present this co-ordination is secured through the Inspector General 30 of Forests with the Government of India. We think that in future co-ordination will best be secured by the creation of a Board of Forestry on which, in addition to forestry experts, representatives of the Provinceal Governments would serve; and we think that the Provinces should be empowered to combine for the purpose of setting 35 up such a Board and contributing to its expenses.

Fature recruitmeet. 295. We consider that appointments of the European and Indian officers required for the higher administrative posts in the Forest Service should in future be made in India. But in the case of a small and very technical service such as the Forest Service, we do not think 40 that the best results could be obtained by separate provincial recruitment; and we recommend therefore that the Provinces should from time to time, with the assistance of the Board of Forestry, prepare a joint statement of their collective requirements in the matter of personnel and entrust the Federal Public Service Com-45 mission with the duty of recruitment on their behalf. The actual appointment of recruits should, however, be made by the Provincial Government under whom he is intended to serve, since that Govern-

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ment will control his conditions of service. We regard it as essential to the success of recruitment that a common training centre should be maintained, and we carnestly hope that the present College at Dehra Dun will be made available for that purpose. We hope also that Provincial Governments will continue the very useful practice 5 of lending any officers required by the Federal Government for such purposes as the staffing of the Central Institute for research and of the Training College and for forestry administration in the Andamans. We think also that the Provinces should be willing to fill higher administrative posts from the Forest Service of another Province, if a 10 suitable candidate from their own Province is not available. In all these matters the Board of Forestry should be able to maintain effective touch between the various Provincial Governments.

The Irrigation Service,

296. Irrigation under Provincial Autonomy will also come under the control of a responsible Minister. We emphasize in this case also the 15 paramount need for research and co-ordination. The Royal Commission on Agriculture in India did not recommend the establishment of a central research station for reasons which we accept; but they expressed a strong opinion that Provinces should devote more attention to the various problems that confront Irrigation Engineers. 20 Unlike the Forests, there is no longer any officer with the Government of India who can give advice on Irrigation matters, although his place is to some extent taken by the present Central Board of Irrigation, which we consider should be developed on lines similar to those on which we have recommended the formation of a Board of 25 Forestry. An efficient organisation for the dissemination of information is also essential and we recommend that the existing Central Bureau of Information should be retained and developed on the lines suggested in the Royal Commission's Report.

297. The higher administrative posts in the Irrigation Service are at Present present filled by members of the Indian Service of Engineers Since 1924 on the recommendation of the Lee Commission recruitment of irrigation engineers has been in the proportion of 40 Europeans and 40 Indians for every 100 appointments, the remainder being filled 35 by officers promoted from the Provincial Services of whom the great majority are Indians In all cases, appointments are made by the Secretary of State

298 The continued recruitment of an adequate number of highly Future qualified engineers, European as well as Indian, is clearly essential ment 40 to the efficiency of the irrigation system, especially in the North-West of India, on which the prosperity and indeed the very existence of millions of the population depends It might well be argued that the Irrigation Service is for this comparable in importance within its own sphere to the Indian Civil Service and the Police Service and 45 that its future recruitment and control should be in the same hands But after a close examination of the question, our conclusion is that the Irrigation Service ought to become a Provincial Service; and we

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are not convinced that even in the Punjab, which is perhaps the crucial case, the situation necessitates a different policy without at least first allowing the Province to prove that it can successfully recruit its own Service We are informed that there are at present 5 67 Europeans and 69 Indians in the Irrigation Branch of the Indian Service of Engineers in the Punjab and that, if the recruitment of Europeans now ceased, the number of Europeans would normally drop to 42 in 1939 and to 21 in 1949, that is to say, there would be for some years unless some incalculable factor intervened, such as 10 greatly increased retirements on proportionate pension, a sufficient number of fully trained officers to fill the most essential posts, those of the three Chief Engineers and fifteen Superintending Lugineers The question of irrigation is scarcely of less importance in Sind but we think that the Governor's special responsibility for the 15 Sukkur barrage is there a sufficient safeguard We think that the Provinces should seek the assistance of the Federal Public Service Commission and the Central Board of Irrigation in matters affecting recruitment

> Question of future by the Secretary of

299 Nevertheless we are of opinion that a power to resume recruit-20 ment should be reserved to the Secretary of State, if a Provincial Government unfortunately proved analyle to secure a sufficient number of recontof satisfactory recruits and it appeared that the economic position of the Province and the welfare of its inhabitants was thereby prejudiced, and provision should accordingly be made for that purpose 25 in the Constitution Act

300 Under the White Paper proposals the Governments in India Recruitwill have a free hand in regard to the recruitment for all other Services 1 We hope that the establishment of Public Service Commissions will Services. assist them in this most responsible task, and we endorse the 30 observations both of the Royal Commission in 1924 and of the Statutory Commission upon the vital necessity for excluding political or personal influences. We desire to emphasize also the assistance which the Federal Public Service Commission will be able to give to the Provincial Commissions in the establishment and 35 maintenance, so far as the differing requirements and resources of the provinces may admit, of common standards of qualifications and remuneration

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## Public Service Commissions

Public Service Commusstons 301 The Public Service Commissions at present existing in India are the Central Public Service Commission, established under the Government of India Act, and the Madras Service Commission, established under an Act of the Madras Legislature in 1929 The legislation necessary for setting up a Public Service Commission in the Punjab has been passed, but the establishment of the Commission awaits an improvement in the finances of the Province The White Paper

1 White Paper, Proposal 190

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proposes the continuance of the Central Public Service Commission as a Federal organ, and the setting up in each Province of a Provincial Public Service Commission <sup>1</sup>

Their

302 The functions proposed for all these Commissions are advisory in character and similar to those at present performed by the Central and Madras Commissions We regard it as essential that each Provincial Government should he able to avail itself of the advice of a Public Service Commission We recognise that it is not practicable to establish one Public Service Commission for all India but we should view with some apprehension the setting up of some ten Provincial Public Service Commissions in addition to the Tederal Public Service Commission We hope therefore that advantage will freely be taken of the proposed provision, which we cordially endorse, whereby the same Provincial Commission would be enabled to serve two or more Provinces jointly, or alternatively, that it should be open to a Province to make use of the services of the Federal Public Service Commission, subject to agreement with the Federal authorities Without accepting the proposals in the White Paper for the composition and working of these Commissions in every detail, we regard them as generally satisfactory.

## Payment of Emoluments and Pensions

Funds for the payment of service emolyments

Certain suggestions rejected, 303. Before leaving this part of our Report, we propose to deal with one matter of general interest to all classes of officers by whatever authority appointed, that is to say, the availability of cash for the payment of Service emoluments, and more particularly for the payment of pensions of officers appointed by the Secretary of State

304 It appeared from the evidence tendered by the various Service Associations that there is apprehension among the Services on this point, and we have very carefully considered whether it requires any special provision in the Constitution Act. We are clear in the first place that it would be undesirable to place officers appointed by the Secretary of State in a privileged position in respect of the provision of cash for current pay, though it is to be remembered that their emoluments will not be subject to the vote of the Legislatures. Regular and punctual payment of emoluments is a legitimate interest of all persons in the Public Services, and no one class of officers can be admitted to have a prior claim in this respect. On the more general question, we have examined suggestions which have been made for a system of prior charges or for building up a reserve fund We are informed that the percentage of the total annual revenues of a Province which would be required for the payment of all Service emoluments may be taken as approximately 40 per cent, and we are satisfied that in respect of payments which constitute so large a proportion of the total annual liabilities of a Province the sugges tions are quite impracticable

White Paper, Proposal 195
 White Paper, Proposals 199-201.

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305. In so far as the apprehension may be that a temporary No special deficiency in the cash required to meet such current obligations as the required. issue of monthly pay might occur, not through any failure in the annual revenues, but through excessive commitments in other direc-5 tions, the good sense of the Government, and the advice of a strong Finance Department, must in our opinion be relied on as the real safeguard Nor must it be forgotten that, although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the Province, it will most certainly be his 10 duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities, including of course his special responsibility for safeguarding the legitimate interests of the Services.

306. We have said that no distinction can, or ought to be, drawn Claims for between the claim of the various classes of officers serving in a pensions by Province for the due payment of their emoluments, but to this appointed general statement of principle we think that there should be one Secretary of qualification. If difficulties should unfortunately arise in regard to State. 20 a claim to pension by an officer appointed by the Secretary of State who has served from time to time in different Provinces, we think that it would be unreasonable that he should have to make his claim against a number of authorities in respect of different portions of his pension. We therefore approve the proposal in the White 25 Paper that the claims of all officers appointed by the Secretary of State for their pensions should be against the Federal Government only, the necessary adjustmente being made subsequently between the Federal Government in the Province or Provinces concerned,1

307. There is, however, one category of pension payments which stands apart from the rest. The assets of the various Family Pension Funds. 35 Funds have been contributed by the subscribers and are their We think it right that subscribers property in a very special sense. to these funds should be given the opportunity of saying whether they desire that a sterling fund should be created with trustees in this country out of which the necessary payments would be made.

and, if that recommendation is adopted, we think that officers 30 appointed by the Secretary of State need have no anxiety regarding the regular and punctual payment of their own pensions and those

## The Anglo-Indian Community

of their dependants.

308. We observe with satisfaction that the White Paper gives effect to a suggestion made with general agreement at the Third Round Indians and the Table Conference for safeguarding Government grants-in-aid for Services. the education of the Anglo-Indian and domiciled European com-45 mnnity. We have inquired whether any additional provision in

White Paper, Proposal 189,

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the Constitution Act is desirable in order to secure to a very small community, which has established a strong claim to consideration by its history and its record of public service, the maintenance of the special position in some of the Public Services, which it has won 5 by its own efforts. We recall that the Services Sub-Committee of the First Round Table Conference recommended that special

consideration should be given to the claims of this community for employment in the Services, but we have come to the conclusion that it would not he in the hest interests of the community itself to single it out for any special statutory protection in this 10 Provision for the due representation in the Services of minority communities is at present secured by administrative measures and not through the Government of India Act and we are informed that these measures are now being carefully reviewed in order to ensure that when the Constitution Act comes into force 15 arrangements will be in operation adequate to protect the legitimate interests of minorities, including the Anglo-Indian community We think that the special attention of the Governor General and the Governors should be drawn in the Instruments of Instructions to these arrangements, and that they should be directed to maintain 20 them without modification, except in so far as may become necessary in the interests of the minority communities themselves or of public policy

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# (4) THE JUDICATURE The Federal Court

The Federal Court. 309 A Federal Court is an essential element in a Federal Constitution. It is at once the interpreter and guardian of the Constitution and a tribunal for the determination of disputes between the 5 constituent units of the Federation. The establishment of a Federal Court is part of the White Paper scheme and we approve generally the proposals with regard to it. We have, however, certain comments to make upon them, which we set out below

The Judges of the Federal Court

310 The Court should, we think, consist of a Chief Justice and not 10 more than six or eight Judges, the maximum number being specified in the Constitution Act, but we do not suppose that for some time to come it will be necessary to appoint more than three or four The retiring age for Federal Judges should be 65 and not 62 We observe that the Judges are to hold office during good behaviour, and not, 15 as is at present the case with Judges of the Indian High Courts at pleasure We think that this is right, hut we assume that it is not intended that the Legislature should have power to present an Address praying for the removal of a Federal Judge, and in our opinion a Judge should not be removed for musbehaviour, except 20 on a report hy the Judical Committee of the Privy Council, to whom His Majesty should he empowered to refer the matter for consideration We concur generally with the qualifications proposed for the Judges, but we doubt whether in principle any distinction ought to he drawn in the Constitution Act between judges advocates and 25 pleaders of State Courts and those of the High Courts, though this does not of course mean that any ohligation would be imposed upon the Crown to appoint a Judge who had not all the necessary pro-fessional qualifications We assume that the White Paper proposals mean throughont by "State Court" the Court of highest jurisdiction 30 A suggestion was made that a High Court Judge who is a member of the Civil Service ought not to he regarded as qualified We could not agree to so invidious a distinction being drawn between one High Court Judge and another, though it may well he that His Majesty may in practice see fit to appoint only such 35qualified persons as have had a legal training before their appointment to the High Court Bench

311 It is proposed that the Federal Court shall have an original Onana jurisdiction in-

turisdiction f Federal

(1) any matter involving the interpretation of the Constitution 40 Act or the determination of any rights or obligations arising thereunder, where the parties to the dispute are (a) the Federation and either a Province or a State or (b) two Provinces or two States, or a Province and a State,

1 White Paper, Proposals 151 162,

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(ii) any matter involving the interpretation of, or arising under, any agreement entered into after the commencement of the Constitution Act between the Federation and a Province or a State, or between two Provinces or a Province and a State,

unless the agreement otherwise provides

This jurisdiction is to he an exclusive one, and in our opinion rightly so, since it would be altogether mappropriate if proceedings could be taken by one unit of the Federation against another in the Courts of either of them But we think that the jurisdiction ought 10 to include not only the interpretation of the Constitution Act, but also the interpretation of federal laws, by which we mean any laws enacted by the Federal Legislature It is essential that there should be some authoritative tribunal in India which can secure a uniform interpretation of federal laws throughout the whole of 15 the Federation.

312 It is also proposed that the Federal Court shall have an Appellate exclusive appellate jurisdiction from any decision given by the High in reduction Court or any State Court, so far as it involves the interpretation of the Court. Constitution Act or of any rights or ohligations arising thercunder,

20 but that no appeal shall lie except with the leave of the Federal Court or of the High Court of the Province or State, or unless in a civil case the value of the subject matter in dispute exceeds a specified In this case also we think that the jurisdiction ought to be extended to include the interpretation of federal laws. We had at

- 25 first thought on a constitutional issue appeal should lie without leave, but we appreciate that in a country where litigation is so much in favour this might result in an excessive number of unnecessary appeals We therefore approve the proposals in the White Paper, though we think that the Federal Court ought to have a summary power of disposing of appeals or applications for leave to appeal in any case where they appear to be frivolous or vexatious or brought only for the purposes of delay. It was urged before as that to permit a litigant in a State Court to apply to the Federal Court for k ave to appeal, if the State Court had already refused leave,
- 35 would be to derogate from the sovereignty of the Ruler of the State, and that the refusal of a State Court to grant leave to appeal at, any rate in a case concerning the interpretation of federal laws, should he treated as final We should much regret the inclusion of

a provision of this kind, not do we appreciate the argument that the 40 sovereignty of the Ruler would he affected The appellate jurisdiction of the Federal Court, so far as regards an Indian State, can only arise from the voluntary act of the Ruler himself, viz , his accession to the Federation, the jurisdiction is in no sense imposed on him It is, however, proposed that all appeals to the Federal

45 Court should be in the form of a Special Case to be stated by the Court appealed from, and, if it would give satisfaction to the States, it might be provided that the granting of leave to appeal by the

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Federal Court should take the form of Letters of Request directed either to the State Court itself or to the Government of the State for transmission to the Court.

Appeals to Privy Council.

313. The appeal to the Privy Council is preserved, and it is proposed that an appeal shall lie without leave in any matter involving the 5. interpretation of the Constitution Act, but in any other case only by leave of the Federal Court (without prejudice to the grant of special leave by His Majesty), unless the value of the subject matter in dispute exceeds a specified sum. We bave no comment to make on this proposal, except that we assume that the jurisdiction of the 10 Privy Council will extend to appeals involving rights and obligations arising under the Constitution Act, as well as the interpretation of the Act itself. Effect will be given to the decisions of the Federal Court, as is the case with decisions of the Privy Council, by the Courts from which the appeal has been brought; and all Courts 15 within the Federation will be bound to recognise decisions of the Federal Court as hinding upon themselves. We may perhaps point out that the jurisdiction of the Privy Council in relation to the States will be based upon the voluntary act of the Rulers themselves, i.e., their Instruments of Accession.

Advisory jurisdiction of Federal Court.

314. It is proposed that the Federal Court shall have a jurisdiction similar to that possessed by the Privy Council under Section 4 of the Judicial Committee Act, 1833, which provides that His Majesty may refer to the Committee for hearing or consideration any matters wbatsoever as His Majesty may think fit, and that the Committee 25 shall thereupon hear and consider the same, and shall advise His The expression used in the White Paper is "any Majesty thereon. justiciable matter which the Governor-General considers of such a nature and such public importance that it is expedient to obtain the opinion of the Conrt upon it." Exception was taken to the Exception was taken to the 30 word "justiciable," and we think perhaps that "any matter of law" would be preferable. We concur generally in the proposal, and we are of opinion that this advisory jurisdiction may often prove of great utility. We agree that it need not be limited to the federal sphere and that the right of referring any matter to the Court for 35 an advisory opinion should be in the Governor-General's discretion, We understand the practice in the United Kingdom is that all such references are heard in open court and that counsel appear and argue as in an ordinary case inter partes. We assume that the same practice will be followed in India, and that there will be no question, 40 as some of the British-India delegates appeared to think, of a private and confidential opinion being communicated by the Court to the Governor-General.

Appointment and materies of Federal Judges. 315. It is common ground that the Federal Judges should be appointed by the Crown; and we think that their salaries should 45 be specified in the Constitution Act or determined by His Majesty in Council and not subject to variation without the assent of Parliament.

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#### The Supreme Court

Proposal for future establishment of a Supreme Court. 316. The White Paper proposes that the Federal Legislature should be empowered to establish a separate Supreme Court to bear appeals from the provincial High Courts (1) in civil cases and (2) in criminal cases where a death sentence had been passed, provided of course that 5 an appeal did not lie to the Federal Court. The Court would in

effect take the place of the Privy Council, though an appeal would still lie to the latter by leave of the Snpreme Court or by special leave of His Majesty. We have given very careful consideration to this 10 proposal, but we do not feel able to recommend its adoption. A Supreme Court of this kind would be independent of, and in no mense subordinate to, the Federal Court; but it would be impossible to avoid a certain overlapping of jurisdictions, owing to the difficulty of determining in particular cases whether or not a constitutional 15 issue was raised by a case under appeal. This might involve the two Courts in undignified and very nudesirable disputes, and we are satisfied that the existence of two such Courts of co-ordinate jurisdiction would be to the advantage neither of the Courts themselves nor of the Federation. There is much to be said for the establishment 20 of a Court of Appeal for the whole of British India, but in our opinion this would be most conveniently effected by an extension of the jurisdiction of the Federal Court, and we think that the Legislature should be empowered to confer this extended jurisdiction upon it. It has been objected that not only would so great an increase in 25 the personnel of the Court be required as to make it difficult to find a sufficient number of Judges with the necessary qualifications, but also that the essential functions of the Federal Court as guardian and interpreter of the Constitution would tend to become obscured. We fully agree that the quality of the Federal Judges is a matter of 30 the highest importance and that nothing ought to be done which might diminish or impair the position of the Court in its constitutional aspect, but we think that the fears expressed are unfounded. In the first place, it is clear that there would have to be a strict limitation on the right of appeal, so as to secure that only 35 cases of real importance came before the Court; and, if this were done, we see no reason why a comparatively small number of additional Judges should not suffice. Secondly, we assume that the Court would sit in two Chambers, the first dealing with Federal, The two Chambers and the second with British-India, appeals. 40 would remain distinct, though we would emphasise the unity of the Court by enabling the Judges who ordinarily sit in the Federal Chamber to sit from time to time in the other Chamber, as the Chief Justice might direct, or Rules of Court provide; but beyond this we do not think that the two Chambers should be interchangeable.

45 317. The Supreme Court under the White Paper proposals would, however, as we have said, have jurisdiction to hear certain criminal appeals from British India. We are satisfied that these would be so numerous that, if the Federal Court were given the extended

A Court of Criminal Appeal not recom-

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jurisdiction which we have suggested, an increase in the number of Judges would be required in excess of anything which we should be willing to contemplate. The question then arises whether the Federal Legislature should be empowered, if and when they thought fit, to 5 set up a separate Court of Criminal Appeal for British India, subordinate to the Federal Court. After eareful consideration we have come to the conclusion that a Court of Criminal Appeal is not required in India. Nearly every case involving a death sentence is tried in a District Court, from which an appeal lies to the High Court, and, apart from this, no death sentence can be carried out until it has been confirmed by the High Court. Ouly three of the High Courts (excluding Rangoon) exercise an original criminal jurisdiction, and though there is no further appeal from these Courts, every prisoner under sentence of death can appeal for remission or commutation of

(C 14542)

sentence to the Provincial Government and ultimately to the Central 15 Government, or, if be wisbes, can ask for special leave to appeal to the Privy Council. In these circumstances the rights of a condemned man seem to be very fully safeguarded, and we think that no good purpose would be served by adding yet another Court to which appeals can be brought.

## The High Courts

The High Court Judges.

318. The Provincial High Courts, which enjoy a deservedly high reputation throughout British India, are scarcely affected by the White Paper proposals1; but we note the following points. It has been represented to us that the retiring age of Judges should not be 25 raised to sixty-two, but should continue to be sixty; and we concur. We have suggested that in the case of the Federal Court the age should be sixty-five, because it might otherwise be difficult to secure the services of High Court Judges who have shown themselves qualified for promotion to the Federal Court; but the evidence 30 satisfics us that in India a Judge has in general done bis best work by the time that he has reached the age of sixty. We note also that the present statutory requirement that not less than one-third of the Judges of every High Court must have been called to the English, Scottish, or Irish Bar, and that not less than one-third must be 35 members of the Indian Civil Service is to be abrogated. We are informed that the rigidity of this rule has sometimes caused difficulty in the selection of Judges, and we do not therefore dissent from the proposed amendment of the law; but we are clear (and we are informed that is the general opinion of their 40 colleagues) that the Indian Civil Service Judges are an important and valuable element in the judiciary, and that their presence adds greatly to the strength of the High Courts. It has been suggested that their earlier experience tends to make them favour the Executive against the subject, but the argument does not impress us; we 45 are satisfied that they bring to the Bench a knowledge of Indian country life and conditions which town-bred barristers and pleaders

<sup>1</sup> White Paper, Proposals 167-175.

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may not always possess, and we do not doubt that the Crown will continue to appoint them. The Indian Civil Service Judges are not at the present time eligible for appointment as Chief Justice of a High Court, though we understand that this rule does not apply in the case of Chief Courts. We see no reason for this invidious distinction, and we think that His Majesty's freedom of choice should not be thus fettered. As regards the tenure of High Court Judges, we think that it should be the same as that which we have recommended for Judges of the Federal Court.<sup>1</sup>

Administrative machinery of High Courts. 319. The administrative machinery of the High Courts is at the 10 present time (save in the case of the Calcutta High Court) subject to the control of the Provincial Governments and Legislatures, and there is evidence that the latter have from time to time tended to assert their powers in a way which might under the new Constitution affect the efficiency of the Courts. The White Paper proposes that in 15 future any expenditure certified by the Governor, after consultation with his Ministers, to be required for the expenses of the High Court shall not be submitted to the vote of the Legislative Assembly, though it will be open to discussion by them. We think that in the circumstances this is a reasonable arrangement and will avoid the 20 difficulties to which we bave referred.

320 We observe that the Federal Legislature is to have an exclusive Federal and Provinced Provinced power to make laws touching the jurisdiction, powers and authority Provinced of all Courts in British India (except the Federal Court and the in relation 25 Supreme Court) with respect to the subjects on which it is exclusively High Courts. competent to legislate, and that the Provincial Legislatures will similarly have power to make laws touching the jurisdiction, powers and authority of all Courts within the Province with respect to subjects on which those Legislatures are exclusively competent to It has been suggested that this would enable either the 30 legislate Federal or a Provincial Legislature, if they so desired, to deprive the High Courts of much of their jurisdiction, and to transfer it to courts of an inferior status, to the grave prejudice of the rights of His Majesty's subjects in India In theory this is no doubt possible, 35 but it is, in our view, a necessary consequence of the distribution of legislative powers which we recommend that both the Federal and Provincial Legislatures should have a law-making power for the purposes which we have mentioned, and, whatever use they may make of it, we are satisfied that they will never willingly enact 40 legislation which would prejudice or affect the status of the High Our information is indeed that, so great is the confidence felt in the impartiality and ability of the High Courts, a converse policy is much more likely, if the past is any guide, to be adopted But, in order that the position of the High Courts may be fully 45 safeguarded, it is for consideration whether the Governor-General and Governors should not be directed in their Instruments of Instruction to reserve any Bill which in their opinion would so derogate from the powers of the High Court as to endanger the position which those Courts are under the Constitution Act clearly 50 designed to fill.

1 Supra, para 810 White Paper, Proposal 98 (111).

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#### The Subordinate Judiciary

321 This subject is not mentioned in the White Paper, but there are Necessity aspects of it which seem to us of such importance that we think it for securing right to state our opinion upon them The Federal and High Court independent 5 Judges will be appointed by the Crown and their independence is by subsecure, but appointments to the subordinate judiciary must necessarily be made by authorities in India who will also exercise a certain measure of control over the judges after appointment, especially in the matter of promotion and posting We have been greatly im-10 pressed by the mischiefs which have resulted elsewhere from a system under which promotion from grade to grade in a judicial hierarchy is in the hands of a Minister exposed to pressure from members of a popularly elected Legislature. Nothing is more likely to sap the independence of a magistrate than the knowledge that his career 15 depends upon the favour of a Minister, and recent examples (not in India) have shown very clearly the pressure which may be exerted upon a magistracy thus situated by men who are known or believed to have the means of bringing influence to bear upon a Minister It is the subordinate judiciary in India who 20 are brought most closely into contact with the people, and it is no less important, perhaps indeed even more important, that their independence should be placed beyond question than in the case of the superior judges We have given anxious consideration to this matter and our recommendations are as follows.

(C 14542)

Candidates seeking to exercise political influence should be disqualified.

322. A strict rule ought in our opinion to be adopted and enforced, 25 though it would be clearly out of place in the Constitution Act itself, that recommendations from, or attempts to exercise influence hy, members of the Legislature in the appointment or promotion of any member of the subordinate judiciary are sufficient in themselves to disqualify a candidate, whatever his personal merits may be. We 30 would admit no exception to this rule, which has for many years past been accepted without question in the Civil Service of the United Kingdom. We do not for a moment suggest that Indian Ministers will be willing to adopt any lower standards; but this is a matter in which the right principle ought to be laid down at the 35 very outset of the new constitutional order; and the observations which we have thought it our duty to make may perhaps serve in the future to strengthen the hands of Ministers who find themselves exposed to improper pressure from those whose standards may not be as high as their own.

(a) The Civil Judiciary

Subordinate judges and munsiffs, 323. In the case of subordinate judges and munsiffs, the Provincial Government—that is to say, the Governor advised by the appropriate Minister, after consultation with the Public Service Commission and with the High Court—should make rules defining the 45 standard of qualifications for candidates seeking to enter the Judicial

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service. Candidates should be selected for appointment by the Public Service Commission, in consultation with the High Court, subject to any general regulations made by the Provincial Government as to the observance of communal proportions. The Minister would be informed by the Commission of the candidate or the candidates selected by them, and the appointment would be made by the Governor on the Minister's recommendation. The Public Service Commission would of course act in an advisory capacity only, but we cannot conceive that any Minister would reject their advice or recommend an appointment without it. We think it of first importance that 10 promotions from grade to grade or from the rank of munsiff to that of subordinate judge, and also the leave and postings of munsiffs and subordinate judges, should be in the hands of the High Court, subject to the usual rights of appeal of the officer affected.

District

julgo.

324. In the case of District Judges or additional District Judges, first 15 appointment should, if the candidate is a member of the Indian Civil Service, be made by the Governor on the recommendation of the Minister, after consultation with the High Court. A recommendation by the Minister for the appointment of a member of the subordinate judicial service should only be made with the approval of the Public 20 Service Commission and of the High Court. A recommendation for a direct appointment from the Bar should be made from among persons nominated by the High Court, subject to any general regula-tions in force regarding communal proportions. A District Judge should only be promoted (except in the case of automatic time scale 25 promotions) on a recommendation by the Minister after consultation with the High Court; and the same rule should apply to postings. In all the cases covered by this paragraph we think that the Governor should have a discretion to reject a recommendation if he does not concur with it. 30

(b) The Criminal Magistracy

Deputy
Magistrates
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325. In the case of deputy magistrates, sub-deputy magistrates and tehsildars, the High Court have little knowledge of their judicial work, and none at all of the work which a large number of them

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35 perform in their executive or administrative capacities. Candidates for a first appointment to these posts should be selected by the Public Service Commission, and the appointment should be made from the candidates so selected by the Governor on the recommendation of the Minister. In the case of subsequent promotions or 40 postings, the Minister should ask for the recommendations of the District Magistrate, in consultation, where necessary, with the Sessions Judge of the district in which the subordinate magistrate works; and we think that, if these recommendations are disregarded, some machinery should be devised for bringing the matter to the 45 notice of the Governor.

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## (5) Commercial and other Forms of Discrimination

326. The importance attached in this country to this part of the Reason Indian constitutional problem has been both misunderstood and statutory misrepresented. It has been misunderstood, because it was thought to provision is necessary. 5 imply a belief that the accepted policy of Indian political leaders is to destroy or injure British commercial interests by unfair and discriminatory legislation or otherwise; and misrepresented, because it has been made the basis of a suggestion that His Majesty's Government are seeking to impose unreasonable fetters upon the future 10 Indian Legislature for the purpose of securing exceptional advantages to British, at the expense of Indian, commerce. The belief and the suggestion are equally without foundation. The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the 15 British mercantile community, firms and companies, trading in India, and the rights of Indian born subjects; witnesses who appeared before us spoke in the same sense; and the British-India Delegation in their Joint Memorandum state that on the question of principle there has always been a substantial measure of agreement 20 in India. On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment, and that their policy is one of a fair field and no favour. The question therefore resolves itself to a consideration of the best method of giving practical effect 25 to the avowed policy and intentions of all concerned. It may indeed be asked why, in view of the assurances of which we have spoken, it is necessary to deal with the matter at all in the Constitution Act; and to this our answer must be that, though we hope and believe that the statutory provisions which we contemplate will in the event 30 prove to have been an excess of caution, yet there have also been statements of a very disturbing character made from time to time by influential persons in India, which could not fail to give rise to suspicions and doubts; and statutory provision by way of reassurance has for that reason become an evident necessity. Nor are the 35 doubts and suspicions thus aroused confined to trading interests in this country; for the minorities in India have expressed similar apprehensions and are anxious to have a statutory safeguard for what they conceive to be their rights.

327. Discrimination may be of two kinds, administrative or 40 legislative. We are satisfied that with regard to the first a statutory prohibition would be not only impracticable but useless, for it would be impossible to regulate by any statute the exercise of its discretion by the Executive. The true safeguard against discrimination of this kind must be found in the good sense of Indian Ministers. But at the 45 same time we agree with the proposal in the White Paper that the

1 White Paper, Proposals 19 and 70.

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Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have discriminatory effect, to intervenc, and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility. But, although we think that the main purpose of this special responsibility will be to counteract discriminatory action in the administrative sphere,—and indeed that it is the only available means for that purpose,—we think that its definition might be made more precise and its ambit more clear; and with this object we suggest that the definition should be "for the prevention of discrimination in matters in respect of which provision is made elsewhere in the Act against discrimination by legislative enactment."

The Fuscal Autonomy Convention,

328. Before considering the scope which should be given to provisions in restraint of legislative discrimination, we think it right to observe that it is not our intention that any of the provisions which we contemplate for the purpose of preventing discrimination, whether administrative or legislative, should be so utilised as to 20 interfere with or limit the fiscal antonomy which India has enjoyed since the acceptance of the recommendations made hy the Joint Committee on the Bill of 1919, commonly called the Fiscal Autonomy Convention. At the same time, fears have been expressed lest the unrestricted operation of this Convention might result, with no 25 remedy available, in the imposition of penal tariffs upon British goods with the object, not of furthering Indian trade, but of injuring British trade, in order to put pressure upon this country for political purposes. We are satisfied that it was not in the minds of the authors of the Fiscal Autonomy Convention, and has never during the period of its 30 operation been in the mind of His Majesty's Government, that the Convention should be invoked in aid of such a policy; and we have been assured by the Indian Delegates that there would be no desire in India that unrestricted fiscal freedom should be utilised in future for a purpose so destructive of the basis of that conception of 35 partnership upon which the whole of our recommendations proceed. In these circumstances we shall, in fact, be making no change in the existing fiscal relations between India and this country if we seek to make plain on the face of the Statute that it is not a legitimate or permissible use of Indian fiscal freedom to discriminate against 40 British trade as such: and we think it essential that on this matter there should be no ground for misapprehension in future. We therefore recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as 45 follows :-- "the prevention of the subjection (otherwise than in accordance with commercial or trade agreements) of British goods imported into India from the United Kingdom to discriminatory treatment as compared with those imported from other countries."

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The Governor-General's Instrument of Instructions 329. But in making this recommendation we further recommend that the Governor-General should be given clear directions in his Instrument of Instructions as to the scope of the special responsibility in question. The instructions we contemplate would indicate that this special responsibility is not intended to affect the competence of the 5 Indian Legislature and of his Government to develop their own fiscal

and economic policy: that the dnty imposed upon him by this provision is that of preventing imports from the United Kingdom from being singled out for specially unfavourable treatment in 10 respect of such matters as enstoms duties, prohibitions or restrictions (other than measures concerned with the preservation of health) compared with the treatment accorded to imports from other countries: that he should understand that it is not within his functions in this respect to attempt to limit the freedom of the Federal 15 Government to negotiate with other countries for the securing of mutual tariff concessions: and finally, that he should be enjoined that it is his duty under this special responsibility not only to prevent discriminatory action, legislative or administrative, but also action which, though not in form discriminatory, is so in fact.

330. We have said that it is, in our view, impossible to attempt discriminany precise definition, with a view to its prohibition, of administrative discrimination. Legislative discrimination, however, stands upon a different footing, and it is in our judgment possible to enact provisions against it. We do not forget that to the Statutory Commission the

25 technical objections to any attempt to define discriminatory legislation in a constitutional instrument seemed decisivel; but we observe that the Federal Structure Committee in their Fourth Report, which was adopted by the Second Round Table Conference, saw "no reason to doubt that an experienced parliamentary draftsman would 30 he able to devise an adequate and workable formula, which it would

not be heyond the competence of a court of law to interpret and make effective." The opinion of a body which contained so many distinguished lawyers must carry great weight, and we concur with them in thinking that the attempt should be made. We do not 35 think that the White Paper proposals on the subject are very clear or precise, and in the paragraphs which follow we shall indicate the statutory provisions which, as it seems to us, ought to find a place in the Constitution Act.

331. We think it right to make by way of preface some general General 40 observations. Firstly, we express our entire agreement with the tions. statement of the British-Indian Delegation in their Joint Memorandum "that a friendly settlement by negotiation is by far the most appropriate and satisfactory method of dealing with this complicated matter," and we shall have certain suggestions to make later on this 45 aspect of it. Secondly, we are of opinion that no case has been made out for extending the scope of any arrangements made in such a way Report, Vol. II, para. 156.

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as to include the relations hetween India and other parts of His Majesty's dominions. It is not for us to comment upon or to criticize certain aspects of Dominion policy towards Indian subjects of His Majesty, but we cannot be unaware of the strong feeling in India on 5 this subject, and India may justly claim the right to protect the interests of her own people in other lands. Lastly, we think that, so far as possible, any statutory enactment should be based upon the principle of reciprocity.

332. Subject to what we say hereafter on the question of recip-10 rocity, we are of opinion (1) that no law restricting the right of entry into British India should apply to British subjects domiciled in the ditions and United Kingdom; hut there should be a saving for the right of the should not may possess to exclude or remove undesirable persons, whether jets dominated that the United Kingdom or elsewhere; and (2) that no law unded in the United suthorities in India to exercise any statutory powers which they apply to British sub-15 domiciled in the United Kingdom or elsewhere; and (2) that no law relating to taxation, travel and residence, the holding of property, Kingdom,

the holding of public office, or the carrying on of any trade, business, or profession in British India, should apply to British subjects domiciled in the United Kingdom, in so far as it imposes conditions or restrictions based upon domicile, residence or duration of residence, 20 language, race, religion, or place of birth

Computes
Incorporated
in the
United
Kingdom
and in India

333 As regards companies, we are of opinion (1) that a company incorporated now or bereafter in the United Kingdom, should, when trading in India, be deemed to have complied with the provisions of any Indian law relating to the place of incorporation of 25 companies trading in India, or to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of the directors, shareholders, or of the agents and servants of such companies, and (2) that British subjects domiciled in the United Kingdom who are directors, shareholders, servants or agents of a 30 company incorporated now or hereafter in India should be deemed to have complied with any conditions imposed by Indian law upon companies so incorporated, relating to the domicile, residence or duration of residence, language, race, religion, descent or place of birth, of directors, shareholders, agents or servants

Provisions should be on bases of reciprocity

334 There should however be reciprocity between India and the United Kingdom, and accordingly if a United Kingdom law imposes in the United Kingdom upon Indian subjects of His Majesty domiciled in India or upon companies incorporated in India conditions, restrictions or requirements in respect of any of the above matters 40 from which in India British subjects domiciled in the United Kingdom and companies incorporated in the United Kingdom would otherwise be exempt, the exemption enjoyed by the latter would pro tanto cease to have effect

1 "Law" throughout this section is intended to include any regulations, bye laws, etc., having the force of law

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Oblipping.

335 We think that separate provision should be made for the case of ships and shipping, and it might be enacted that ships registered in the United Kingdom should not be subjected by law in British India to any discrimination whatsoever, as regards the ship, officers or crew, or her passengers or cargo, to which ships registered in British India 5 would not be subjected in the United Kingdom

Baceptions

336 We are satisfied that there would have to be certain exceptions. Thus, the statutory provisions which we have suggested ought not to affect any laws in force at the commencement of the Constitution Act, or laws which exempt from taxation persons not domiciled or 10 resident in India. We are also disposed to think that some provision ought to be made for the purpose of securing that the Executive is not unduly bampered in case of emergency, and it is for consideration whether the provisions which we have suggested should find a place in the Constitution Act ought not to be subject to the power of 15 the Governor-General and the Provincial Governors to declare in their discretion that a law to which those provisions would otherwise apply is necessary in the interests of the peace or tranquillity of India (or a Province, as the case may be) or any part thereof

Bomtes and subsidies 337 A further exception seems necessary in connection with 20 the Indian Acts, federal or provincial, which authorise the payment to companies or firms of grants, subsidies or bounties out of public funds for the purpose of encouraging trade or industry in India A Committee, known as the External Capital Committee, in 1925 recommended that certain conditions should be attached 25

to grants of this kind and their recommendations were adopted and have since that date been acted npon, by the Government of India. These seem to us to have been conceived in a very reasonable spirit, and we do not think that any objection could be 30 taken to them. But we think that a distinction may properly be drawn between companies already engaged at the date of the Act which authorizes the grant, in that branch of trade or industry which it is sought to encourage, and companies which engage in it subsequently; and we therefore recommend that in the 35 case of the latter it may be made a condition of eligibility for the grant that the company should be incorporated by or under Indian law, that not more than half of the directors shall be Indians, and that the company shall give such reasonable facilities for the training of Indians as the Act may prescribe. In the case of the former, the 40 reciprocal provisions which we have suggested would continue to apply, and the company should be equally eligible to participate in the grant with Indian companies.

338. The effect of our recommendations for the statutory Bills disprohibition of certain specified forms of discrimination would in fact 45 be, of course, to lay open to challenge in the Courts as being in the courts as being in sough rultra vires any legislative enactment which, having been assented in form. to by the Governor-General or a Governor, as the case may

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be, is alleged to be inconsistent with these prohibitions. But it will clearly be the duty of the Governor-General and of the Governors to exercise in accordance with these statutory prohibitions their discretion in giving or withholding their 5 assent to Bills. And we think that the Instrument of Instructions should make it plain, as we have already indicated in connexion with the Governor-General's special responsibility in relation to tariffs, that it is the duty of the Governor-General and of the Governors in exercising their discretion in the matter of assent 10 to Bills not to feel themselves bound by the terms of the statutory prohibitions in relation to discrimination but to withhold their assent from any measure which, though not in form discriminatory, would in their judgment have a discriminatory effect. We have made, we hope, sufficiently plain the scope and the nature of the 15 discrimination which we regard it as necessary to prohibit, and we have expressed our belief that statutory prohibitions should be capable of being so framed as generally to secure what we have in view. We are conscious, however, of the difficulty of framing completely watertight prohibitions and of the scope which ingenuity 20 may find for complying with the letter of the law in a matter of this kind while violating its spirit. It is, in our view, an essential concomitant of the stage of responsible government which our proposals are designed to secure that the discretion of the Governor-General and of the Governors in the granting or withholding of assent to all 25 Bills of their Legislature should be free and unfettered; and in this difficult matter of discrimination in particular we should not regard this condition as fulfilled if the Governor-General and Governors found themselves strictly bound by the terms of the statutory prohibitions. We further recommend that, if in any 30 case the Governor-General or a Governor feels doubt whether a Particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination, he should be instructed to reserve the Bill for the signification of His Majesty's pleasure.

Practice of professions.

339. Our attention has been called to the question of the qualifica-35 tions required for the practice of the different professions in India, and the suggestion has been made that persons bolding United Kingdom qualifications ought to be secured a statutory right to practise in India by virtue of those qualifications. The case of medical practitioners has features of its own and we deal with it separately in the 40 paragraphs which follow: but with regard to professional qualifications in general we are unable to accept the suggestion. No person has at the present time a right to practise his profession in India by virtue of a United Kingdom qualification, unless that qualification has been recognised as giving a title to practise (as has been done in 45 more than one instance) by some Indian law; an English barrister, for example, only has the right to practise before an Indian High Court if the rules of the Court have given a right of audience to

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English barristers. We can see no justification for imposing upon Indian Legislatures a statutory restriction in this respect which does not exist at the present moment, and we think that they should be free to prescribe the conditions under which the practice of professions generally in India is to be carried on. But it seems to us that the vested interests of those who are practising a profession in India at the commencement of the new Constitution Act may properly be safeguarded; and we think that they should have a right to continue to practise notwithstanding any future Act which may be passed by any Indian Legislature requiring Indian qualifications as a condition 10 of practice. We may bowever be permitted to express the hope that when the different professions in India become, as we bope they will, organised and controlled by their own governing bodies, arrangements will be freely made with the corresponding bodies in the United Kingdom for the mutual recognition in both countries of the 15 qualifications prescribed by each, or at least that mutual facilities will be given for their acquisition.

Burne

340. On the assumption that Burma will be separated from British India we think that British subjects domiciled in India ought to be accorded in Burma the same treatment which would be given in 20 India to British subjects domiciled in the United Kingdom, save as regards the right of entry into Burma, on which in view of the special circumstances we shall have recommendations to make in due course. These matters would fall to be dealt with in the separate legislation which will be required to establish the new con-25 stitutional machinery in Burma; but it will also be necessary to consider to what extent corresponding treatment should be accorded in India to British subjects domiciled in Burma, provision for which would find a place in the Indian Constitution Act; and our recommendations on this matter also will be found in that part of 30 our Report which deals with Burma.

Opportunity should be given for conventional arrange ments in the future

341. We have expressed our concurrence with the statement in the British-Indian Joint Memorandum that "a friendly settlement by negotiation is by far the most appropriate and satisfactory method" of dealing with the question of discrimination. At the first Round 35 Tab'e Conference the Report of the Minorities Sub-Committee was adopted which contained a paragraph to the effect that there should be no discrimination between the rights of the British mercantiles community trading in India and the rights of Indian born subjects, and that "an appropriate convention hased on reciprocity should 40 he entered into for the purpose of regulating these rights." It was

suggested by some that a convention for this purpose should be negotiated forthwith, and it was argued that in that event statutory provision in the new Constitution would be rendered unnecessary 45 We have no doubt however that such a convention, designed to regulate rights under a new constitutional order, could not with propriety be made except with the new Indian Government, and that the proposal made in January, 1931, was for that reason

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ımpracticable Nevertheless, since we hold strongly that the conventional is preferable to the statutory method, and that agreement and goodwill form the most satisfactory basis for commercial relations hetween India and this country, we think that there should 5 be nothing in the Constitution which might close the door against a convention We recommend accordingly that provision be made enabling His Majesty, if satisfied that a convention has been made between His Majesty's Government in the United Kingdom and the new Government of India covering the matters with which we bave 10 already dealt in this part of our Report, and that the necessary legislation for implementing it has been passed by Parliament and by the Indian Legislature, should be empowered to declare by Order in Council that the statutory provisions in the Constitution Act shall not apply so long as the convention continues in force between 15 the two countries It may he said that the practical result will be exactly the same, and this no doubt is true, but the ment of the proposal, as we see it, is that it would enable the Indian Government and Legislature, if they so desire, to substitute a voluntary agreement for a statutory enactment, and would therefore give to the 20 arrangements for the reciprocal protection of British subjects in India and the United Kingdom respectively the conventional basis which in our judgment it is most desirable that they should have

## Medical Qualifications

342 The question of the mutual recognition of medical practitioners of Medical 25 in the United Kingdom and British India has unhappily become a Act 1886. matter of political controversy in India during the last few years, and in view of its importance to both countries, it seems desirable that we should describe shortly the present position The Medical Act 1886, empowers His Majesty by Order in Council to apply the 30 Act to any British possession" which in the opinion of His Wajesty affords to the registered medical practitioners of the United Kingdom such privileges of practising in the said British possession as to His Majesty may seem just 'The Act has been applied to British India, in view of the recognition there accorded to practitioners 35 registered in the United Kingdom, and this entitles any person . who holds an Indian medical diploma recognised for the time being by the General Medical Council as ' furnishing a sufficient guarantee of the possession of the requisite knowledge and skill for the efficient practice of medicine, surgery and midwifery" to be registered on 40 application in the United Kingdom medical register The Act also provides that where the General Medical Council have refused to recognise a medical diploma for this purpose, the Privy Council, on application being made to them, may, if they think fit, after considering the application and after communication with the 45 General Medical Council, order the latter to recognise the diploma, and the Council are thereupon under a statutory obligation to do so It will thus be seen that, though the Act is based upon the principle

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of reciprocity, the General Medical Council is not compelled to give an automatic recognition to each and every diploma conferred in the other countries to which the Act applies, but is entitled, subject to an appeal to the Privy Council, to satisfy itself that any particular diploma is such as to furnish a sufficient guarantee of the . 5 possession of the requisite medical knowledge and skill. We underatand that in countries where there is some central authority corresponding to the General Medical Council, the Council is accustomed to consult that body for the purpose of satisfying itself that a particular diploma about which perhaps a question has been raised 10 affords the guarantee required; but where such hody does not exist, the Council must of course make its own inquiries. We should point out that the General Medical Council in the United Kingdom does not itself confer medical degrees. It keeps the medical register; that is to say, a register of medical practitioners who have passed a 15 qualifying examination in medicine, surgery, and midwifery, held by Universities in the United Kingdom and certain other bodies, in which a standard of proficiency satisfactory to the Council bas been attained; and the Council, though they do not themselves examine, are thus able in effect to secure that the qualifying 20 examinations and the standard of proficiency are adequate.

Withdrawal of recognition of Indian medical diplomas,

343. Until very recently there was no central body in India corresponding to the General Medical Council, and therefore no authority with power to secure and maintain a common standard for the medical qualifications evidenced by the diplomas recognized by the various 25. provincial Medical Councils in India. It appears that there was in consequence a considerable variation in the standards adopted by these bodies, and the Council some four years ago took the drastic step of refusing any longer to accord recognition to Indian medical diplomas, as the Indian Legislature had refused to provide the 30 money for a system of inspection which would have been acceptable to the General Medical Council pending the establishment of a system of inspection by an all-India Medical Council. It is perhaps not surprising that the action of the Council caused resentment and protest. It was believed by many that political, or at least ulterior, 35 motives lay behind it; but no one who is aware of the integrity and independence of the Council and its complete dissociation from every kind of political influence can doubt that it was inspired solely by a desire to promote the interests of medical education and to secure the highest standard of proficiency in those who claimed to be 40 admitted to the United Kingdom register. On the merits of the dispute we are not of course competent to pronounce, nor are we able to say whether the Council might bave achieved their purpose in some way less likely to wound Indian susceptibility; but of the purity of its intentions we cannot entertain any doubt, and it is to 45 be regretted that none of those affected though fit to avail themselves of the right of appeal to the Privy Council and to obtain a decision from a body whose impartiality could not be questioned.

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Indian
 Medical
 Council Act,
 1933.

344. The controversy has had, at any rate, one satisfactory result; for the Indian Legislature have now passed an Act known as the Indian Medical Council Act, 1933, which sets up a Medical Council for the whole of British India with substantially the same functions as those of the General Medical Council in the United Kingdom. This Act sets out in the First Schedule the medical qualifications

granted by medical institutions in British India, which are to be recognised for the purposes of the Act, and gives the Council power to secure by inspection and, in the last resort, by the withdrawal of recognition an adequate standard of proficiency. In the Second Schedule are set out the medical qualifications granted by medical institutions outside British India which are to be recognized for the purposes of the Act, and in this list are included the registrable qualifications granted by licensing bodies in the United Kingdom which admit to the United Kingdom medical register. These are to continue unaltered for a period of four years, but the Council are empowered to enter into negotiations with the authority in any country outside British India entrusted with the maintenance of a register of medical practitioners for the settlement of a scheme for the reciprocal recognition of medical qualifications. The Governor-General is to be informed of the decisions of the Council to recognise or refuse to recognise the medical qualifications proposed by the authority abroad for recognition in British India; and he is to frame a new Schedule (to become effective four years after the commencement of the Act) which will comprise the medical qualifications thereafter to be recognised. Provision is also made enabling the Governor-General in Council after the expiration of four years to amend the Schedule and to add further qualifications, or to recognise only qualifications granted before or after a specified date. It will thus be seen that the Governor-General in Council would, on the representations of the Indian Medical Council, be free to withdraw at any time after the expiration of four years the recognition in British India secured to medical practitioners on the United Kingdom medical register, though there is a saving for all medical qualifications granted previously.

345. We appreciate and sympathise with the efforts of the Indian The Act medical profession to put its house in order, and we hope that co-operation between the two Councils (for we are convinced that smangegood will is not lacking on either side) will go far to ensure an amicable and agreed solution of the present difficulty. We are of opinion that the Indian Medical Council Act, with only slight modifications, can be made the basis of a permanent and satisfactory arrangement. The references in the Act to the Governor-General in Council will in any event require modification under the new Constitution, and at first sight it would appear that it would be sufficient to substitute a reference to the Governor-General, i.s., the Governor-General advised by his Ministers, since this is a matter falling within the ministerial sphere. But we confess that we should find difficulty

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in agreeing that the Governor-General is an appropriate authority for determining whether any particular qualification should be recognised; for this is not a matter of policy, but one which involves technical and professional considerations. We think that the true solution is to be found in an adaptation of the provisions in the United Kingdom\_Act which we have mentioned above, whereby any refusal by the General Medical Council to recognise a medical diploma granted abroad may be made the subject of an appeal to the Privy Council; and we suggest that if after the expiration of four years the Indian Medical Council proposes to withhold recognition of any of the United Kingdom qualifications set out in the Second Schedule to the Indian Act, an appeal should lie to the Privy Council, whose decision should be final. The Act of 1886 requires the Privy Council, before giving its decision on a refusal to recognise a diploma granted abroad, to communicate with the General Medical Council, and there 15 should be a corresponding provision that in the converse case there should be communication with the Indian Medical Council, but we are disposed to think that the law should be amended so as to provide that in either case both Councils should be communicated with before the decision of the Privy Council is given. We hope that 20 before the four years have expired, as a result of joint action between the two Councils, the General Medical Council will have seen its way to restore its recognition of Indian diplomas, and that discussions may proceed between them free from political influence or, has and with the sole object of promoting the interests of medical 25 education in both countries

The Indian Medical Service, 346 There is one aspect of this question which seems to us to present special features. It is not necessary to emphasise the importance of the Indian Medical Service from the military point of view, and in our opinion the members of the Service ought by 30 virtue of the commissions which they hold to be deemed to possess all necessary statutory qualifications entitling them to practise

## Fundamental Rights

A declara tion of fundamental rights im practicable 347 The question of so-called fundamental rights, which was much discussed at the three Round Table Conferences, was brought to our 35 notice by the British-India Delegation, many members of which were anxious that the new Constitution should contain a declaration of rights of different kinds, for reassuring minorities, for asserting the equality of all persons before the law, and for other like purposes, and we have examined more than one 40 list of such rights which have been compiled The Statutory Commission observe, with reference to this subject —"We are aware that such provisions have been inserted in many Constitutions, notably in those of the European States formed after the war Experience however has not shown them to be of any great practical 45 value Abstract declarations are useless, unless there exist the will and the means to make them effective "1" With these observations

1 Report Vol II, para 86

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we entirely agree and a cynic might indeed find plausible arguments in the history during the last ten years of more than one country for asserting that the most effective method of ensuring the destruction of a fundamental right 15 to include a declaration of its existence in a constitutional instrument. But there are also strong 5 practical arguments against the proposal, which may be put in the form of a dilemma for either the declaration of rights is of so abstract a nature that it has no legal effect of any kind of its legal effect will be to impose an embarrassing restriction on the powers of the Legislature and to create a grave risk that a large number of 10 laws may be declared invalid by the Courts because inconsistent with one or other of the rights so declared. An examination of the lists to which we have referred shows very clearly indeed that this risk would be far from negligible. There is this further objection that the States have made it abundantly clear that no declaration 15 of fundamental rights is to apply in State territories and it would be altogether anomalous if such a declaration had legal force in part only of the area of the Federation There are however one or two legal principles which might we think, be appropriately embodied in the Constitution, and we direct attention to them in the 20 paragraphs which follow. There are others, not strictly of a legal

kind to which perhaps His Majesty will think fit to make reference in any proclamation which He may be pleased to issue in connection with the establishment of the new order in India

348 Among the proposals in the White Paper is one which would Eligibility put it beyond the power of any Legislature in British India to make for holding laws (with certain exceptions) subjecting any British subject to to any disability or discrimination in respect of a variety of specified matters, if based upon religion, descent, caste, colour or place 30 of birth 1 This proposal seems to us too wide and likely to fetter unduly the powers of the Indian Legislatures, and we understand that His Majesty's Government have, after consultation with the Government of India, arrived at the same conclusion We agree that some declaration of the general rights of British subjects in 35 India is required, but we think that it would be preferable to base it upon the existing section of the Government of India Act think that this declaration should provide that no British subject, Indian or otherwise, domiciled in India shall be disabled from holding public office or from practising any trade, profession or 40 calling by reason only of his religion, descent caste, colour or place of birth, and it should be extended, as regards the holding of

349 We think also that the expropriation in British India of Expropria private property, except for public purposes and on payment of time of 45 compensation to be assessed by some independent authority, should properly be expressly prohibited 1 his would quiet doubts which have been caused in India by certain Indian utterances and would tend to strengthen the forces of law and order

office under the Federal Government, to subjects of Indian States

1 White Paper, Proposal 122

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### (6) CONSTITUENT POWERS

350 The White Paper proposes (and we entirely concur) that, what- Meaning of ever the powers of the Indian Legislatures may be in relation to Acts of Parliament in general, they shall not extend to the enactment of any 5 law affecting the provisions of the Constitution Act, except in so far as that Act itself empowers them to do so 1 By "Constituent Powers, therefore, we mean powers conferred by the Constitution Act upon some authority other than Parliament to vary specified provisions of the Act, whether or not such variation is required by the Act to be 10 subject to the approval of Parliament

351 We are satisfied that, though there are various matters in the Grant of be left quite appropriately to modification by the Central or Provincial Legislatures, as the case may be as subsection to Indian 15 may show to be desirable, it is not practical politics here and now to practicable attempt to confer such powers upon them. It would be necessary not merely to decide what matters could thus be dealt with, but also to devise arrangements to ensure that the various interests affected by any proposed modification were given full opportunity to express 20 their views, and that changes which they regarded as prejudicial to themselves could not be forced upon them by an inconsiderate majority. With a Constitution necessarily so framed as to preserve so far as may be a nice balance between the conflicting interests of Federation and Provinces, of Province and Province, of minority 25 and majority, and, indeed, of minority and minority, and with so much that is unpredictable in the effects of the inter play of these forces, it is plain that it would be a matter of extreme difficulty to

devise arrangements likely to be acceptable to all those who might be affected, and it would probably be found that the balance could only be preserved and existing statutory rights only guaranteed by 30 a humber of restrictions and conditions upon the exercise of the constituent powers which would make them in practice unworkable But whether or not this can reasonably be regarded as a defect in the Constituent Act, we do not think that the question is one of immediate importance, since we should have felt bound in any 35 event to recommend that the main provisions of the Act should remain unaltered for an appreciable period say, for ten years, in order to ensure that the Constitution is not subjected at the outset to the disturbances which might follow upon hasty attempts to modify its details

Constitutional smendment otherwise than by Act of Paragment, 352 At the same time we are satisfied that there are various matters which must be capable from the beginning of modification and adjustment by some means less cumbrous and dilatory than amending legislation in Parliament. To meet this need, we recommend that the requisite powers for ensuring elasticity, where it is 45

3 White Paper, Proposal 110

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necessary should be placed by the Act in the hands of His Majesty's Government but subject nevertheless, to the control of Parliament We may add that we could not in any case regard some of the provisions to which we think that this procedure should apply as appropriately entrusted to any authority in India for amendment 5 or modification The White Paper proposes that the regulation of certain matters should be prescribed in detail by His Majesty in Council after the Constitution Act is passed, and that any subsequent variations should be effected in the same manner Orders in Council are commonly made upon the advice of Munisters without the inter- 10 vention of Parliament, but there is also a well established procedure, for which precedents are to be found in many Acts of Parliament, whereby both Houses of Parliament are enabled to consider and to approve the drafts of any proposed Orders before they are finally submitted to His Majesty, and in certain cases we think that this 15 procedure would be appropriate for the Orders in Council now under consideration

Admins trativo matters

- 353 The matters which, under the White Paper <sup>1</sup> it is proposed to prescribed by Order in Council fall into three categories. The first class comprises
  - (a) The payments (other than salary proper, which is to be fixed by the Act itself) to be made to the Governor-General and Governors on their own account and that of their personal staffs
  - (b) The salaries and conditions of service of the Governor- 25 General's Counsellors,
  - (c) The salaries, pensions, leave and other allowances of the Judges of the Federal Court and of the High Courts

We see no reason wby, except in the case of (s).\* Parliament should desire to concern itself directly with these matters, the settlement of 30 which is in the nature of an executive function

354 But there are other matters to be prescribed which are of an essentially different nature —

(a) the percentage of income tax which is to be assigned to

(a) the percentage of income tax which is to be assigned to the Provinces and the basis on which that assignment is to be 35 made,

winch
should
be under
control of
Parliament.

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(b) the sum to be retained at the outset by the Federation out of the proceeds of taxes on income which would otherwise be assigned to the Provinces;

(c) the basis on which the States are to contribute to Federal revenues during the operation of Federal surcharge on income

White Paper, Proposals 10, 12, 152, 171.

See supra, para. 315.
 White Paper, Proposals 37, 87, 108, 139, 141, 144.

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(d) the subventions to be made from Federal revenues to certain deficit Provinces;

(e) the qualifications of electors to the Provincial and Federal Legislatures; the delimitation of constituencies, the method of election of representatives of communal and other interests; the filling of casual vacancies and other ancillary matters; and

(f) the specification of the areas to be treated as Excluded

and Partially Excluded, respectively.

Some of these matters can scarcely be determined until after the 10 Constitution Act is on the statute book; and to set out the others in the Act itself would add greatly to its length and complexity. We agree, therefore, that the method of proceeding by Order in Council, with a power to modify subsequently by the same method, is both necessary and appropriate.

355. In the determination of all matters in this second category, we think it essential that Parliament should have a voice; and we recommend that a provision should be included in the Constitution Act requiring every Order in Conneil relating to them to be laid in draft before both Houses of Parliament for thirty sitting days before 20 it is submitted to His Majesty. It would thus be open to either House to criticize the draft, if its provisions appeared objectionable, and His Majesty's Government would then have to consider whether it should not be withdrawn or revised; but we think also that His Majesty's Government should also have the power, in any case where To such a course seemed desirable, to submit the death to both Houses for approval by affirmative Resolution. A procedure of this kind would, we think, enable Parliament to retain effective control over these subsidiary matters, and would secure that demands were only made upon parliamentary time when the intrinsic importance of the

30 proposals made was sufficient to justify such a course.

356. We have given reasons for our conviction that a specific grant Resolutions of constituent powers to authorities in India is not at the moment a practicable propostion. We think, however, that a plan whereby the new Legislatures can be associated with the modification hereafter 35 of the provisions of the Act, or of any Order in Council, relating to latures. the composition and the size of the Legislatures or the qualifications of electors, is very desimble. It is, of course, competent for anv Legislature in India to pass a Resolution advocating a constitutional change, with a request that its Resolution should be forwarded to 40 His Majesty's Government for consideration, and for this no provision in the Constitution Act would be required. But in our view it ought hereafter to be possible, under specified conditions, for a responsible , Government in India, with the approval of its Legislature, to be assured that any such Resolution is actually taken into consideration 45 hy His Majesty's Government and their decision upon it formally recorded. We recommend, therefore, that where an Indian Legislature

amendment

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has passed a Resolution of this kind and has presented an Address to the Governor-General or Governor, as the case may be, praying that His Majesty may be pleased to communicate it to Parliament, the Resolution shall be laid before both Houses of Parliament not later than six months after its receipt, with a statement of the action 5 which His Majesty's Government propose to take upon it

357 But we think that this procedure should be subject to the following conditions —

(a) that the Resolution should be confined in scope to matters concerning the size and composition of, and the franchise for, the 10 legislatures.

(b) that the Federal Legislature should have no power to propose an alteration in the size or composition of either Chamber which would involve a variation of the proportions of the seats allotted to the States and the Provinces respectively, or of the 15 relative size of the two Houses,

(c) that the procedure should not come into force until the expiry of ten years—in the case of a Provincial Legislature from the inauguration of Provincial Autonomy, and in the case of the Federal Legislature from the inauguration of the Federation,

(d) that, as a guide to His Majesty's Government and Parliament in this matter, the Governor General or Governor, as the case may be, should be required, in forwarding a Resolution, to state his own views on the question of its effect upon the interests of any minority or minorities, and, finally,

(e) that the Resolution should have been proposed on the motion and on the responsibility of the Federal or Provincial Ministers, as the case may be

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(7) THE SECRETARY OF STATE AND THE COUNCIL OF INDIA

358 The Secretary of State in Council is by statute a body corporate, and the powers exercisable by the corporation thus brought into existence are singular and indeed in some respects anomalous, because inconsistent with the doctrine of ministerial responsibility. 5 The Council itself consists of the Secretary of State and not less than eight nor more than twelve members, of whom at least one-half must have served or resided in India for at least ten years. The members other than the Secretary of State hold office for a term of five years, but, like His Majesty's Judges and the Comptroller 10 and Auditor-General, may be removed from office on an address presented to the Crown by both Houses of Parliament

359 The Secretary of State in Council has power to dispose of real or personal estate vested in the Crown, to raise money by way of mortgage, and to make, vary and discharge contracts, and at the present time in any suit, whether in India or elsewhere, to which the Government of India or any Local Government or any official employed by them is a party, the proceedings must be in the name of the Secretary of State in Council. The Secretary of State in Council is also the only authority for raising loans in this country for the purpose of the 20 Government of India. The Council of India, under the direction of the Secretary of State, is required to "conduct the business transacted in the Umited Kingdom in relation to the Government of India and the correspondence with India." At meetings of the Council, questions are decided by a majority vote, but the Secretary of State 25 may, if he thinks fit, over-rule the Council, except in certain matters for the decision of which a majority of the Council present and

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(1) grants or appropriations voting is required. These matters are of any part of the revenues of India, (2) the sale or disposal of real or personal estate and the raising of money thereon by mortgage or otherwise, (3) the making of contracts, including instruments of contract of civil offices in India , (4) the application to the Government of India and the local Governors of anthority to perform on behalf and in the name of the Secretary of State in Council any of the obligations of the last two heads, (5) the passing of any order affecting the salaries of members of the Governor-General's Council; and (6) the making of rules regulating various matters connected with the Indian Public Services.

360 The Bill which became the Act of 1858 under which the Crown Power in and Parliament first assumed complete responsibility for the government of India, originally provided that the decision of the Secretary of State should be final in all matters which had given rise to a difference of opinion in the Council of India, but the House of Commons insisted upon limiting the authority of the Secretary of

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State over the expenditure of Indian revenues, firstly, by requiring the concurrence of the Council of India to grants or appropriations of any part of those revenues, and secondly, by requiring the consent of both Houses of Parliament to the defraying from Indian revenues of the cost of any military operation beyond the external frontiers of India The purpose of these amendments appears to have been the anxiety of Parliament not to leave a Minister the unfettered disposal of the whole of the revenues of India and of the large patronage which would thereby be placed in his hands, and to afford safeguards against the expenditure of Indian revenues on purposes other than those arising strictly out of the necessities of Indian government The result has been that His Majesty's Government have never had, and have not now, the power to compel contributions from Indian revenues for Imperial purposes, if a majority of the Council of India refuse to sanction the proposal, and there is reason to believe that the powers of the Council in this respect have on more than one occasion in the past enabled a Secretary of State successfully to resist pressure from his colleagues in the Government to authorize expenditure from Indian revenues which appeared to him prejudicial to the interests of the Indian taxpayer

361 We cannot doubt that under a system of responsible govern- conment in India, the Secretary of State in Council could not continue on the present basis If will no longer be necessary with the transfer of responsibility for finance to Indian Ministers, that there should continue to be a body in the United Kingdom with a statutory control over the decisions of the Secretary of State in financial governmatters, nor ought the authority of the Secretary of State to extend to estimates submitted to an Indian Legislature on the advice of Indian Ministers But in our opinion it is still desirable that the Secretary of State should have a small body of Advisers to whom he may turn for advice on financial and service matters and on matters which concern the Political Department

362 We concur, therefore, in the proposal in the White Paper that An advisory body the Secretary of State should be empowered to appoint not less than proposed. three nor more than six persons for the purpose of advising him, of whom two at least must have held office for at least ten years under the Crown in India 1 The Secretary of State will be free to seek their advice, either individually or collectively, on any matter as he may

tinuance of of India not responsible

think fit, but will not be bound to do so save in one respect only. It 40 is proposed that so long as he remains the authority charged with the control of any members of the Public Services in India, he must lay before his Advisers, and obtain the concurrence of a majority of them to, the draft of any rules which he proposes to make under the Constitution Act for the purpose of regulating conditions of service, 45

<sup>1</sup> White Paper, Proposal 176.

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and any order which he proposes to make upon an appeal to him from any member of the service which he controls. These proposals in effect preserve to the Services the safeguards which they at present enjoy through the Council of India, and we have only two suggestions to make with regard to them. We think in the first place that the service of the Advisers who are required to have held office for at least ten years under the Crown in India should not have terminated more than two years before their appointment; and, secondly, it seems to us reasonable in the circumstances that at least half of the Advisers should have the service qualification.

363. The disappearance of the Secretary of State in Council as a statutory corporation will necessitate provisions in the Constitution Act transferring to the appropriate authority, the Federal Government, Provincial Governments, or the Railway Authority, as the case may be, the rights, liabilities and obligations incurred by the 15 Secretary of State in Council by contract or otherwise before the establishment of the new Constitution, any existing rights or suit and arbitration in this country being preserved against the Secretary of State as the successor to the Secretary of State in Council in respect of these liabilities. It seems to us that provision will also 20 have to be made for giving a juristic personality to the Federal and Provincial Governments for the purpose of enabling them in future to sue and be sued in their own names.

364. The Statutory Commission expressed the opinion that if material reductions in the India Office staff should result from their 25 recommendations, the question should be considered whether special compensation ought not to be granted to civil servants employed in the India Office for whom equivalent employment cannot be provided elsewhere, since the ordinary rules regulating the compensation of retrenched civil servants did not seem appropriate in the case of 30 officers whose careers might be terminated as a result of changes in high policy.1 We are informed that the Secretary of State 19 unable at the present time to make any forecast of the volume of business which the India Office will have to transact under the new order. but that the possibility of retrenchment sooner or later is very real 35 and involves an extraordinary risk which no one on the India Office staff could have foreseen at the dats of his entry into the Civil Service and which it is not right to ask him to assume now without any prospect of compensation, if he should be affected. In these circumstances we are of opinion that the power of the Secretary of State 40 to grant compensation from Indian revenues to members of the Indian Public Services should extend to any members of the India Office staff who may be retrenched in consequence of the constitutional changes. EReport, Vol. II, para, 360.

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365. We understand that at the present time the expenses of the India Office establishment are a charge on the revenues of India, but that an annual grant in aid of £150,000 is made by the Treasury. This

is a matter which ought, we think, to be considered in connection with 5 future changes. It seems to us that it would correspond more nearly with the constitutional position now to be established if the expenses of the India Office were included in the Civil Service Estimates of the United Kingdom, but that Indian revenues should contribute a grant in aid, in view of the functions which the Secretary of State 10 and his Department will continue to perform on behalf of the Governments in India.

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### (8) THE \*RESERVE BANK

366. We have in an earlier passage referred to the necessity of leaving Indian no room for doubt as to the ability of India to maintain her financial Regressiability and credit at home and abroad. This is naturally of great 1834. 5 importance in the sphere of carreacy and exchange, which, besides their pervading influence on the whole economic structure of the country, may have far-reaching effect upon government finances. At present currency and exchange are the direct concern of the Government of India, but for some time it has been felt to be 10 desirable that they should be entrusted to a central bank, which would also control the credit mechanism of the country. The economic justification for such a change becomes reinforced when constitutional changes are being made in the form of government at the Centre. We agree with the view which, we understand, 15 has been taken throughout by His Majesty's Government that a Reserve Bank on sure foundation and free from political influence should already have been established and in successful operation before the constitutional changes at the Centre take place. The Indian Legislature has recently passed a Reserve Bank of India Act, 20 and we are assured that this measure should provide the Bank with a sound constitution. As regards the date of its inauguration, we understand that no definite statement can yet be made. This must of course depend to some extent on the absence of unfavourable economic developments; but we gather that there is at present 25 no reason to anticipate that it cannot be brought into being well in advance of constitutional changes at the Centre. Reliance on the Bank to play its due part in safeguarding India's financial stability and credit clearly demands that at all events its essential features should be protected against amendments of the law which would 30 destroy their effect for the purpose in view.

367. The White Paper proposals require the prior consent of the Certain Governor-General at his discretion to the introduction of legislation ments of affecting that portion of the Reserve Bank Act which regulates Act should the powers and duties of the Bank in relation to the management require 35 of currency and exchange1; that is to say, they do not cover the sanction of constitution of the Bank itself. We feel however that so narrow a definition leaves open the possibility of amendment to other portions of the Act which might prejudice or even destroy some of the features of the system which we would regard as essential to 40 its proper functioning. It seems clear that the Act must be considered as a whole and we recommend that any amendment of the Reserve Bank Act or any legislation affecting the constitution and functions of the Bank, or of the coinage and currency of the Federation, should require the prior sanction of the Governor-45 General at his discretion. Certain of the functions vested by the Reserve Bank Act in the Governor-General in Council (of which an important example is the appointment of the Governor,

Doputy Governor and four nominated Directors of the Bank) will in future require to be vested in the Governor-General in his discretion, and appropriate provision in the Constitution Act will 50 be needed to secure this •

2 White Paper, Proposal 119

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# (9) FUTURE ADMINISTRATION OF INDIAN RAILWAYS.

Railway
Policy and
a Statutory
Railway
Authority.

368 It is stated in the White Paper¹ that His Majesty's Government consider it essential that, while the Federal Government and Legislature will necessarily exercise a general control over railway policy, the actual control of the administration of the State Railways in India (including those worked by Companies) should be placed by the Constitution Act in the hands of a Statutory Railway Authority, so composed and with such powers as to ensure that it is in a position to perform its functions upon business principles without being subject to political interference

Report of Committee in June, 1933

369 Questions of principle and detail arising out of the proposal were considered by a very representative Committee which sat in London in June, 1933 The Report of the Committee (described as "Sketch Proposals for the Future Administration of Indian Railways") has been made available to us and was published in our 15 Records on 27th July, 1933, and for convenience of reference we reproduce it as an Appendix We consider that the scheme outlined by the Committee provides a suitable basis for the administration of the Indian Railways, subject, bowever, to two conditions to which we attach importance, viz, that not less than 20 three of the seven members of the proposed Authority should be appointed by the Governor General in bis discretion, and that the Authority should not be constituted on a communal basis We have also considered the question whether the statutory basis for the new Railway Authority should be provided by the Constitution Act 25 or by Indian legislation There would be obvious advantages in having in being at the earliest possible date a statutory Railway Authority conforming as closely as possible, both in composition and powers, with the body which will function after the establishment of the Federation, and we see no objection to the necessary steps 30 being taken to this end in India. But even so we are clearly of opinion that the Constitution Act must lay down the governing principles upon which this important piece of administrative machinery should be based, and consequently that the provisions of the first (and any subsequent) Indian enactment on this matter 35 should conform with those principles

Certain matters should be regulated by Con stitution 370 In our view it will be necessary to regulate under the Constitution Act the following matters —

(a) The extent of the control of the Federal Government and the Indian Legislature over the Railway Authority (paras 1 40 and 2) It will also be necessary under this head to make it clear that the Governor-General's special responsibilities extend to the operations of the Railway Authority

White Paper, Introd , para 74
References are to paragraphs of the Sketch Proposals

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(b) The principles which should guide the Authority (para 5).
(c) The method of appointing members (para 2, subject to our observations above)

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(d) The conditions for the separation of railway finances from

general finances (paras. 5-7).

(e) The right of the Indian railway companies as laid down in their contracts to have access to the Secretary of State in regard to disputed points and, if desired, to proceed to arbitration (para. 4).

(f) Machinery for arbitration proceedings on disputed issues in the railway field (para. 12). It is a matter for consideration whether a tribunal of a permanent character rather than a tribunal ad hoc, as suggested by the Committee, would not be more suitable for this purpose.

(g) Requirement of prior consent of the Governor-General at his discretion to legislation affecting the constitution or powers

of the Railway Authority.

# APPENDIX (IV)

# Sheich Proposals for the future Administration of Indian Railways

1. Subject to the control of policy by the Federal Government and the Legislature, a Railway Authority will be established and will be entrusted with the administration of railways in India (as described in paragraph 4) and will exercise its powers through an executive constituted as described

in paragraph 3.

2. The Railway Authority will consist of seven members. The Committee is divided on the question whether (a) three will be appointed by the Governor-General in his discretion and four by the Governor-General on the advice of the Federal Government or (b) all will be appointed by the Governor-General on the advice of the Federal Government. Those members 0 of the Committee who are members of the Central Legislature, with the exception of Mr. Anklesaria, support the latter alternative. All the Hindu and Muslim members of the Central Legislature on the Committee agree that out of the seven seats on the Railway Authority two should be reserved for the Muslim community and one for the European community. Sir 5 Phiroze Sethna, Mr. Anklesaria, Sir Manubhai Mehta and the European members of the Committee, while they would welcome an authority representative of all interests and all communities so far as is compatible with efficiency, do not consider that any special provision should be made in the statute for the establishment of the Railway Authority on a communal 40 basis. The seven members so appointed must be possessed of special knowledge of commerce, industry, agriculture or finance, or have had extensive

Mr. Joshi would add "knowledge of public affairs." Mr. Joshi considers that two seats on the Railway Authority should be specially reserved for representatives of Labour and the travelling public. Mr. Joshi and Dr. Ahmad consider that if the Authority is to consist of a whole-time Chairman and part time members, the number should be increased.

Mr. Joshi and Mr. Anklesaria consider that special representation should be given to agriculturalists on the Railway Authority.

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administrative experience. The President1 of the Authority, who shall have the right of access to the Governor-General, will be appointed from the members by the Governor-General in his discretion.

The Federal Minister responsible for Transport and Communications may 5 at any time convene a special meeting of the Railway Authority for the purpose of discussing matters of policy or questions of public interest. At such meetings the Federal Minister will preside. The Federal Minister may by order require or authorise the Railway Authority to give effect to decisions of the Federal Government and the Legislature on matters of 10 policy, and it shall be obligatory on the Railway Authority to give effect to such decisions.

No Minister or member of the Federal Legislature or any other Legislature in India will be eligible to hold office as a member of the Authority till one year has elapsed since he surrendered his office or seat, nor will 15 any person be appointed as a member of the Authority who has been a servant of the Crown in India, a railway official in India, or has personally held railway contracts, or has been concerned in the management of compames holding such contracts, within one year of his relinquishment of office or of the termination of the contract as the case may be. The Federal Minister responsible for Transport and Communications may, if he sees 20 . fit, attend the ordinary meetings of the Authority or be represented thereat, but in neither case, will there be the right to vote. The members of the Authority will hold office for five years, but will be eligible for re-appointment for a further term of the same length or for a shorter term. (In the case of the first appointments, three will be for three years only, but these members 25 will be eligible for re-appointment for a further term of three or five years)

Any member of the Authority may be removed from office by the Governor-General in his discretion if, in his opinion, after consultation with the Federal

Government, there is sufficient cause for such action.

Members shall be be appointed to the Railway Authority who are prepared 30 to give their services to such an extent as may be required for the proper performance of their duties as laid down in the Statute.3 Their emoluments shall be such as to secure suitable men who will be prepared to devote sufficient time for the proper discharge of their duties and responsibilities, and will be fixed by the Governor-General in his discretion after consultation 35 with the Federal Government, the emoluments of the members of the first Railway Authority being fixed in the Statute.

3. At the head of the railway executive there will be a Chief Commissioner, who must possess expert knowledge of railway working, and will be appointed by the Railway Authority subject to the confirmation of the Governor- 40 General. A Financial Commissioner will be appointed by the Governor-General on the advice of the Federal Government. He must possess extensive financial experience and have served for not less than 10 years under the Crown or have shown outstanding capacity in the conduct of the financial

<sup>3</sup> Mr. Joshi and Mr Ranga Iyer consider that the appointment of President should be made on the advice of the Federal Government.

<sup>8</sup> Mr. Joshi and Mr. Yamin Khan hold the view that in regard to the membership of a Legislature the year's disqualification should not apply, but that any member of a Legislature appointed to the Railway Authority will shee facto vacate his ceat.

<sup>9</sup> Mr. Ranga Iyer, Mr. Padshah, Mr. Joshi, Dr. Ahmad and Mr. Yamin Khan are of opinion that the members should be "whole time," while the other members of the Committee consider that the Committee's recommendation does not exclude the amountment of whole time numbers, should

other members of the Committee consider that the Committee's recommends than does not exclude the appointment of whole time members, should experience prove this to be necessary.

'Mr. Joshi and Mr. Ranga 'yer hold that "In his discretion after consultation with" should read "on the advice of."

'Mr. Joshi would add " and the Federal Government."

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affairs of commercial or railway undertakings. The Railway Authority, on the recommendation of the Chief Commussioner, may appoint additional Commissioners who must be chosen for their knowledge of railway working. Except in matters relating to Finance the Chief Commissioner shall have power to overrule his colleagues. The Chief Commissioner will carry out 5 the duties from time to time delegated to him by the Railway Authority and may delegate such powers to his subordinate officers as may be approved by the Railway Authority.

4. The Railway Authority will be responsible for the proper maintenance and efficient operation of the railways vested in the Crown for the purposes 10 of administration (including those worked by Companies), all of which will remain vested in the Crown for the purposes of the Federal Government. The Railway Authority will also exercise the control over other railways in British India at present exercised by or on behalf of Government. Provision will be made for safeguarding the existing rights of Companies working 15 under contracts with the Secretary of State in Council, and it will be the daty of the Railway Authority to refer to the Secretary of State any matters in dispute with the Companies which, under the terms of those contracts, are subject to the decision of the Secretary of State in Council or which may be referred to arbitration. It will be obligatory on the Railway Authority 20 and the Federal Government to give effect to the decision of the Secretary of State or the award of an arbitrator.

- 5 In exercising the control vested in it, the Railway Authority will be guided by business principles, due regard being paid to the interests of agriculture, industry and the general public and to Defence requirements. After meeting from receipts the necessary working expenses (including provision for maintenance, renewals, depreciation, bonus and interest on Provident Funds, interest on capital and other fixed charges, payments to Companies and Indian States under contracts or agreements) the surplus will be disposed of in such mainer as may be determined from time to time by the Federal Government under a scheme of apportionment running for a period of not less than five years. In the event of a dispute as to the adequacy or otherwise of the allowance to be made in respect of renewals and depreciations the Auditor-General shall be the deciding authority Pending any new scheme of apportionment the disposal of any surplus will be governed by the arrangements in force at the time the Authority is established.
- 6 The Railway depreciation, reserve and other funds should be utilised solely for railway purposes, and be treated as far as possible as the property of the Railway Authority. The investment of such funds and the realisation of such investments by the Railway Authority shall be subject to such conditions as the Federal Government may prescribe. A Committee might be convened in India to advise what those conditions should be
- 7 Revenue estimates will be submitted annually to the Federal Government, which will in turn submit them to the Federal Legislature, but these estimates will not be subject to vote. If the revenue estimates disclose the need for a contribution from general revenues, a vote of the Legislature will, of course, be required. The programme of capital expenditure will be submitted to the Federal Government for approval by the Federal Legislature. The Federal Government, may, however, empower the Railway Authority to incur capital expenditure subject to conditions to be prescribed.
- 8 The Railway Authority will be empowered, subject to the powers of the Governor-General in the exercise of his special responsibilities, and subject to the safeguarding of the rights of all officers in the service at the time of the establishment of the Railway Authority, to regulate by rules or by general or special order the classification of posts in the railway services on State-worked lines in British India, and the methods of recruitment,

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qualifications for appointment to the service, conditions of service, pay and allowances. Provident Fund benefits, gratuities, discipline and conduct of those services, to make such delegations as it thinks fit, in regard to appointments and promotions, to authorities subordinate to it, and to create such new appointments in the State Railway Services in British India as it may deem necessary or to make to authorities subordinate to it such delegations as it thinks fit in regard to the creation of new appointments. In its recruitment to the railway services the Railway Authority shall be required to give effect to any instructions that may be laid down to secule the representation of the various communities in India. In regard to the framing of rules to regulate the recruitment of the Superior Railway Services the Public Service Commission<sup>1</sup> shall be consulted. Any powers in regard to matters dealt with in this paragraph at present exercised by the Government of India over Company-managed railways shall in future be exercised by the Railway Authority.

- 9 The Railway Authority will at all times furnish the Federal Government with such information as that Government may desire, and will publish an Annual Report and Annual Accounts The Accounts of the State-owned lines in British India will be certified by or on behalf of the Auditor-General
- 10 Should any question arise involving a conflict of interest between the various authorities in British India responsible for railways, waterways and roads as competitive means of transport, a Commission will be appointed by the Governor-General to ascertain the views of all the interests concerned and to report, with recommendations, to the Federal Government, whose decision shall be final. The Commission shall consist of one independent expert of the highest standing and experience in transport matters, with whom will be associated, at the discretion of the Governor-General, two or more assessors.

11. The Federal Government shall lay down regulations for safety on all the Indian railways and one of the Departments of the Federal Govern- 30 ment, other than that responsible for Transport and Communications, shall be responsible for the enforcement of such regulations, subject, in the case of the Indian States, to the provisions of their respective Instruments of Accession

In regard to the railways referred to in paragraph 4, maxima and minima 35 rates and fares shall be fixed by the Railway Authority subject to the control of the Federal Government. Any individual or organisation having a complaint against a railway administration under the control of the Railway Authority in respect of any of the matters which may, at present, be referred by the Railway Department to the Railway Rates Advisory Committee, 40 may have the matter referred, under such conditions as the Federal Government may prescribe, to an Advisory Committee to be appointed by the Federal

<sup>1</sup> Mr Joshi and Mr. Padahah consider that the Public Service Commission abould be consulted in regard to the recruitment of both the Superior and Subordinate Services to the extent practicable.
Sir Muhammad Yakub considers that the Public Service Commission

should be utilised in making appointments as far as practicable.

Mr. Mudaliar and Mr. Joshi hold that the restriction under this clause to railways in British India conflicts with the provisions contained in the White

Paper on the subject.

Air, Ranga Iyer considers that the present powers exercised by the Government of India over all railways in Indian States should be exemised by the Railway Authority under the Federal Government.

It was represented on behalf of the Indian States that separate arrangements would be required for railways owned by Indian States, and accordingly no provision has been made for such railways in the scheme except to some extent under safety (peragraph 11, sub-paragraph 1) and again under arbitration (paragraph 12).

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Government Before the Federal Government passes any order on a recommendation of the Advisory Committee it shall consult the Railway Authority.

12.1 Provision should be made for the reference, at the request of either the Railway Authority or the Administration of a railway owned by an Indian State, of disputes in certain matters such as the construction of new lines, the routing and interchange of traffic and the fixation of rates, to arbitration by a tribunal consisting of one nominee of each party and a chairman approved by both parties. The decision of the Committee should be final and binding on both parties. Should the parties be unable to agree on the nomination of a chairman, he shall be nominated by the Governor- 10 General in his discretion

The arrangements should be such as not to prejudice the position of the Federal Court as the interpreter of the Constitution and Constitutional documents.

Mr. Mudaliar and Mr. Joshi dissent from the proposals in this clause as antagonistic to the proposals in the White Paper.

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# (10) AUDIT AND AUDITOR-GENERAL

371. At present, Audit in India, both Central and Provincial, is carried out by a staff under the Auditor-General. He is appointed by the Secretary of State in Council, who also frames rules defining his powers and duties. In India, Accounts and Audit are carried out by a combined staff, so that the Auditor-General has functions in relation to Accounts as well as to Audit. An experiment was tried in recent years in one Province of separating Accounts from Audit but was abandoned on the grounds of expense. There is at present no constitutional provision requiring the report of the Auditor--10 General to be laid before the Legislature in India, though in fact this is done. Audit of the Accounts of the Secretary of State is carried out by the Auditor of Indian Home Accounts who, in accordance with Section 27 (1), Government of India Act, is appointed by

15 the Crown by warrant countersigned by the Chancellor of the Fxchequer His report is by statute presented to Parliament It has also been found convenient to use the services of the Home Auditor to audit expenditure by the High Commissioner

The position and functions of the Auditor General and the Home 20 Auditor have been fully described by the Statutory Commission 1

372 When under the future Constitution the revenues of India Future are vested in the Tederal and Provincial Governments, and no longer mental in the Secretary of State in Council as at present it will clearly be necessary to provide that the Auditor General in India shall report 25 to those Governments and to the Legislatures in India, instead of to the Secretary of State in Council With the establishment of Provincial Autonomy it will also be necessary to enable a Province to conduct its own Audit and Accounts if it should desire to do so, although, both on grounds of economy and for other reasons, many 30 advantages would be gained by the maintenance of the present Even if some or all of the Provinces should ultimately conduct their own Audit and Accounts, it is desirable that Accounts framed on a common basis should be available for such purposes as the consideration by the Federal Government of applications for 35 loans from Provincial Governments or proposals for the assignment of revenues to Units of the kind mentioned in our earlier section on Federal Finance \*

373 As regards payments made by the Secretary of State in this August of country out of Indian revenues, these will in future be mainly on Accounts

40 behalf of the Central Government, especially in relation to Defence Constitutionally they will not in general differ from those made by the High Commissioners except that they will more often relate to Reserved Departments than will be the case with expenditure by the High Commissioner It appears desirable that the Audit of these

<sup>4</sup> Report, Vol I, para 432 <sup>5</sup> Supra paras 241-262

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payments should be made by a Home Auditor on behalf of the Auditor-General in India and that the report should go through the latter to the Indian Legislature

374 The White Paper contains no proposals relating to the Recom-5 Auditor-General or the Home Auditor although it recognises that the necessary provision would have to be made 1 Our recommendations on this subject are as follows -

### Auditor General in India

(1) The Auditor General in India should be appointed by the 10 Crown, and his tenure should be similar to that of a High Court Judge, that 19, during good behaviour, subject to an age limit and he should be removable only by the King in Council He should not be eligible for further office under the Crown in India His salary and general conditions of service should be 15 prescribed by Order in Council

> (n) His duties and powers should be prescribed in the first instance by Order in Council but the Federal Legislature should have power to amend and supplement these provisions; subject to the prior assent of the Governor General in his

20 discretion to the introduction of the legislation

> (iii) The cadre of the Audit and Accounts Department should be fixed by the Federal Government Salaries should be

votable, except in cases where individual salaries are already

non-votable under other provisions of the Act

(iv) Central Audit and Accounts should apply as at present 25 to the Provinces for a period of at least five years, but Provinces should be empowered to take over their own Accounts, or Audit as well as Accounts, on giving three years notice the earliest date for such notice being two years after the establishment of Provincial Autonomy. The Constitution Act should 30 provide that if a Province elects to take over its own Audit the Chief Auditor of the Province shall be appointed by the Crown with tenure and conditions of service prescribed in the same way as those of the Auditor-General

(v) The Report of the Auditor-General on the Federal 35 Accounts should be submitted to the Governor General, who would be required to lay it before the Federal Legislature. His report on the Provincial Accounts (or the Report of the Provincial Chief Auditor if the Province had taken over Audit) should be submitted to the Governor who would be 40

required to lay it before the Provincial Legislature

(vi) Whether a Province has taken over Accounts or Audit or not, it is essential that there should be established a uniform general form of Accounts for the Federation and for all British

1 Winte Paper Introd , para 78

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India Provinces Apait from this requirement, a Province which had taken over Accounts or Audit should have the same powers mutatis mutandis, as the Federal Government, in relation to the duties and functions of the Auditor General and his staff

### Auditor of Indian Home Accounts

(1) Expenditure from Indian Revenues, Federal or Provincial, incurred in the United Kingdom, whether the disbursements are made in the High Commissioner's Office or in the Office of the Secretary of State should be audited on behalf of the Auditor-10 General in India, by an Anditor of Indian Home. Accounts His report should be sent to the Auditor-General for incorporation in the Auditor-General's own report for presentation to the Indian Legislatures. In the event of a Province having its own Chief Auditor, the Home Auditor would report to him 15 in relation to expenditure relating to that Province

(ii) The Auditor of Indian Home Accounts should be under the general superintendence of the Auditor-General and subject to the general provisions mentioned above with regard to powers and duties. The Home Auditor should be appointed by the 20 Governor-General in his discretion. His salary which should be non-votable, and his conditions of service, except that his tenure of office and the procedure for removing him would be the same as in the case of the Auditor-General (though the age limit might differ) would be determined by the Governor-General

(iii) As regards the staff of the Home Auditor, cadre and salaries should be fixed by the Governor-General in his discretion. Salaries should be votable, unless in any individual case non-votable under any other provisions of the Act. The 30 Home Auditor himself should appoint and remove members of his staff. Rights of existing members of the staff of the Home Auditor, including non-votability of salaries, should be protected.

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### (11) ADVOCATES-GENERAL

375. In the course of our enquiry we have been impressed by the Functions desirability of making available to each Provincial Government the services of a Law Officer of independence and standing, who would 5 occupy substantially the same position as that of the Advocate-General at present attached to the Governments of each of the three Presidencies of Bengal, Madras and Bomhay. Section 114 of the Government of India Act enables His Majesty to appoint by warrant an Advocate-General for each of those Presidencies, hut defines his 10 functions no more explicitly than by providing that each Advocate-General may take on behalf of His Majesty such proceedings as may he taken by His Majesty's Attorney-General in England. We are informed however that in practice the functions of the Advocate-General may be briefly described as being to advise the Provincial 15 Government on any legal problem which may be referred to him, to • represent the Crown in original civil causes in the High Court to which the Crown is a party, and also in any criminal appeals in the High Court which are regarded as of special importance; while instances of his power to take such proceedings as may be taken 20 hy the Attorney-General here are his power to enter a nolle prosequi, or to grant a fiat for review of verdict, in criminal cases tried by the High Court in its original jurisdiction, and to protect public rights in such matters as public charities and public nuisances.

> General appointed Provinces.

Advocates

376. We think that it will prove under the new Constitution no 25 less necessary that an office of this kind, with a statutory basis, should be at the disposal of all Provincial Governments than it has proved in the past in the three Presidencies, where its existence is due to the fact that in the three Presidencies the High Courts, with which the Advocate-General himself has an historical connexion, 30 have themselves a history differing from that of the High Courts elsewhere. It is no part of our intention to suggest that the office of Advocate-General should, like that of the Law Officers here, have a political side to it; indeed, our main object is to secure for the Provincial Governments legal advice from an officer not merely 35 well qualified to tender such advice but entirely free from the trammels of political or party associations, who would retain his appointment for a recognised period of years irrespective of the political fortunes of the Government or Governments with which he may be associated during his tenure of office. We think in 40 particular, that the existence of such an office would prove a valuable aid to a Ministry in deciding the difficult questions which are not infrequently raised by those prosecutions which require the authority of the Government for their initiation, though we recognise that the responsibility for decisions in these matters must of necessity rest 45 in the last resort on the Government itself. We recommend, therefore, in order to secure the objects which we have in view, that the Constitution Act should require each provincial Governor to select

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at his discretion and appoint an Advocate-General holding office during his pleasure, and should contain an appropriate definition of the functions of the office in the sense in which we have described them above.

377. We understand that the Governments of the Provinces to Other legal which the office of Advocate-General is not at present attached have to rely for their legal advice either upon an officer, selected usually

from the cadre of District Indges, who fills the post of Legal Rememhrancer, or upon the member of the legal profession appointed in each District to act as Government Pleader and Public Prosecutor 10 Our proposal for the creation of the office of Advocate-General in every Province will not of course affect the necessity for retaining the existing appointments of Government Pleader and Public Prosecutor, nor do we contemplate that an Advocate-General would be in administrative control of these functionaries. And, although 15 our recommendations are based on the assumption that the Provincial Government will seek the opinion of the Advocate-General on any legal question of importance on which advice is needed, there will still arise in day to day administration numerous matters of less importance which raise legal questions, for dealing with which 20 the services of a Legal Remembrancer will, we have no doubt, continue to be required, indeed we understand that such an officer is found necessary in the three Provinces which at present have an Advocate-General

The Federal Advocate-General

78 The historical association with the Government of India of 25 the High Court of Judicature at Calcutta (which, if our recommendations are accepted, will now he terminated, thus placing the High Court in the same relations with the Provincial Government as in the case of all other High Courts) accounts for the fact that the Advocate-General of Bengal acts as a Law Officer not only to the 30 Bengal Government, but also to the Government of India think that there can be no justification for continuing this anomalous arrangement, which became still more anomalous when Calcutta, the permanent home of the Advocatc-General, ceased to he the headquarters of the Government of India But it will be in our 35 opinion of the first importance that the Federal Government should have at its disposal the services of an Advocate General of its own, and this need will be the more marked with the establishment of the Federal Court, before which the Federal Government will require to be represented by an Advocate of standing and repute 40 Here also we think it essential that the Advocate-General should hold his office on a settled tenure and should have no political associations with the Federal Ministry, and provision for his appointment (which would in the case also be made by the Governor-General acting in his discretion) and functions should he on the 45 same lines as we have indicated in the case of the Provincial Advocates-General

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#### (12) THE HIGH COMMISSIONER FOR INDIA

The High Commissioner 379 There has been a High Commissioner for India in London since 1920 Orders in Council framed under Section 29A of the Government of India Act make provision for his appointment and duties, and various agency functions on behalf of the Government of India and Provincial Governments which were formerly discharged by the India Office have been transferred to him. Under the new Constitution it will be no less essential, and constitutionally even more appropriate, that there should be a High Commissioner, though the White Paper does not make any reference to this subject.

Appointment should be made by Governor General in his discretion 380 As the High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government it seems to us appropriate that the appointment should he made by the Governor-General in his discretion though we assume that he would consult his Ministers before doing so. It may he that some of the 15 States which accede to the Federation would also find it useful to employ the agency of the High Commissioner for some purposes, and we consider that it should he open to them to do so.

381. It will no doubt be necessary for the Constitution Act to Dutle make appropriate provisions on various matters connected with the missioner. High Commissioner, such as the making of contracts and the safeguarding of existing rights of members of his staff who were originally transferred; and it may well be that examination will show that it is the High Commissioner who will be the appropriate authority to assume the liability to be sued in this country in respect of obligations of a Government in India and that provision to that effect should be made in the Constitution Act.

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## (13) TRANSITORY PROVISIONS

382. We have expressed the opinion that, while it is desirable, if Transfer, the second in the provision of the second in the se both for the establishment of antonomy in the Provinces and also for Provincial not essential, that the same Constitution Act should make provision the establishment of the Federation, the establishment of Provincial Autonomy is likely to precede in time the inauguration of Federation. Federation. It is clear therefore that the Constitution Act should contain provisions of a transitory nature which will, on the inauguration of Provincial Autonomy, settle the constitution and powers of the Central Government and Legislature which are for the time being to co-exist with the autonomous Provinces, until such time as they can be replaced by the Federal Government and Legislature for which provision will be made in the Constitution Act,

383. This matter is dealt with very briefly in the White Paper. Proposal in White The scheme there contemplated is that the Constitution Act will paper, contain provisions enabling temporary modifications to be made in the provisions relating to the Federation, so as to enable the present Indian Legislature to continue in existence, to suspend the operation of the provisions relating to the Council of Ministers to be appointed by the Governor-General, and to provide during the interim period for the administration of all Departments of the Central Government by the Governor-General, with the assistance of Counsellors responsible to himself, as though they were Reserved Departments. Examination of these proposals has led us to regard them as not in all respects appropriate; for instance, one effect (which we understand was not in fact in the minds of His Majesty's Government when the proposal was framed) of treating all Departments of the Central Government as for the time being Reserved Departments within the meaning of the White Paper would be to remove from the purview of the Legislature all supply required for Central purposes and to make it non-votable. We fully accept so far as it goes the general intention stated in the White Paper as underlying these proposals, viz, that the Central Government, though necessarily deprived of much of its present range of authority in the Provinces, should for the time being be placed in substantially the same position as that occupied by the Governor-General in Council under the existing Act. But we are of opinion that the actual method proposed in the White Paper for securing this result is not the best available, and, indeed, that the purpose to be achieved as not fully stated.

384. We do not attempt to set out in detail the method which be seemed. should be adopted to secure the object in view, since we recognise that the problem is largely one of the technicalities of draftmanship. We think it right however to indicate the general purposes which, by whatever method, ought in our opinion to be attained as the

Supra, para. 154. White Paper, Proposal 202.

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result of these transitory provisions—It is clear in the first place that it will be necessary to keep in being the existing Central Legis lature, composed as at present and elected upon the existing franchise, and with the existing number of nominated members, official and non-official—and in the second place, there should in our opinion—5 be no necessity during the transitory period to alter the composition of, or the method of appointment to, the existing Central Executive But, granted these two premises, it is equally clear that the establishment of Provincial Autonomy will necessitate consequential changes in the powers of both the Central Legislature and Executive, which 10 will differ but little from the changes which will result from the establishment of Federation

Medifications in White Paper proposals recurs mended

385 Provincial Autonomy as envisaged by our recommendations necessitates, no less than Federation, a statutory distribution of legislative powers between the Central and Provincial Legislatures, 15 and a distribution which will be identical with that contemplated under Federation Similarly, Provincial Autonomy will involve, so far as the Provinces are concerned, the same statutory distribution of financial powers and resources as that contemplated under Federation And, in order to determine questions arising 20 between Centre and Provinces out of their legislative and financial relationships, a Tederal Court will be no less necessary during the interim period than under Federation. So far as the Executive is concerned, Provincial Autonomy involves the same limitations upon the powers of the Central Executive in relation to the Pro- 25 vinces as will be involved for the purposes of Federation, and, in that connexion, it will be no less necessary under Provincial Autonomy than under Federation to differentiate between the functions of the Governor General in Council (at the moment a corporate body, exercising corporately with very narrow exceptions 30 all the functions of the Central Executive) and those of the Governor-General In other words, it will be as necessary under Provincial Autonomy as under Federation to give the Governor-General personally that control over the Governors in the exercise of their special responsibilities and of matter left 35 by law to their discretion which is involved in our proposals relating to Provincial Autonomy, and to make it clear that the power which under Federation will vest in the Governor General acting in his discretion to give mandatory directions through the Governors to Provincial Governments, with which we have already dealt, must 40 be vested during the transitory period also in the Governor-General acting in his discretion We consider further that the recommendation which we have made with regard to the settlement of disputes between Province and Province, or between the Centre and a Province with regard to water rights should also be brought into 45 force during the transitory period and that from the date of the

> Supra paras 220-22 Supra para 224

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mauguration of Provincial Autonomy the Governor-General should become solely responsible for the control of the relations between the Crown and the States

Details should be left to draftsman.

386 Such, in our view, are the purposes which any transitory provisions should be designed to secure, and, as we have already indicated, we think that it should be left to the ingenuity of the draftsman to suggest to His Majesty's Government the best and most appropriate method of carrying them into effect

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# PART III BURMA

### (1) INTRODUCTORY

387 The White Paper, as we have said elsewhere, does not deal The "Burne 5 specifically with Burma, because at the date when it was issued opinion upon the constitutional problem appeared to be still The Secretary of State has, however, suhmitted to us Proposals for a scheme of constitutional reform in Burma, which are set out in a document very similar to the White Paper This 10 document has been printed among the Records of the Committee, and it will be convenient to refer to it hereafter as "the Burma White Paper", but the Secretary of State has made it plain that, unlike the Indian White Paper, its recommendations are not to be taken as representing the final and considered policy of His Majesty's 15 Government, but only as a first sketch of the main lines of a possible Constitution, if Burma is separated from India Since this document was submitted to us, we have had the advantage of full discussions with the Burma Delegates, who also furnished us before and after their departure from this country with a number of memoranda on 20 the Proposals, to which we have given our close attention and which have been of great value to us These memoranda are also printed among the Committee's Records

388 We propose in this part of our Report to give first A short Subjection account of Burma and of the reasons which have led us to the 25 conclusion that it should not form part of the Indian Federation, secondly, to consider the very important question of the trade relations between India and Burma after separation, and thirdly, to set out our recommendations as to the future government of the country in the form of a commentary upon the Burma White Paper

The Province of Burma

389 Burma is the largest of the Provinces which at the present Area of time constitute British India It extends from the high mountainous area in latitude 28° N, where the unadministered tribal tracts of Assam and Bengal march with Tihet and China, to the mouth of 35 the Irrawaddy, latitude 16° N, and to Victoria Point, latitude 9.58° N, on the narrow Malay Peninsula, which divides the Gulf of Siam from the Bay of Bengal Its total area is some 234,000 square miles. Madras, the next largest Province, has an area of about 142,000 square miles The population of Burma is, however, only 40 14,500,000, which is less than the population of any other Indian Province, except Assam and the North-West Frontier Province, with areas of 49,000 and 13,000 square miles respectively.

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390 The Province falls into three main geographical divisions; on the west Arakan, lying between the Bay of Bengal and the range of hills known as the Arakan Yomas, which mark the western side of the Irrawaddy basin, in the centre the Irrawaddy basin, which is 5 in many ways the beart of Burma and the true home of the Burmese people, and on the south-east the long narrow strip comprising the old province of Tenasserim, which runs down the west side of the Malay Peninsula to Victoria Point, and which with Moulmein as its capital was the nucleus of British territorial dominion in Burma. 10 The physical characteristics of these three divisions present striking contrasts, and it is a far cry from the City of Rangoon, planned and laid out on modern lines, with a population of 400,000 and a port

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handling a volume of exports and imports only surpassed in India by Calcutta and Bombay, to the sparsely inhabited mountain tracts where the most primitive forms of cultivation afford a precarious 15 living to isolated tribal communities. Political consciousness ranges correspondingly from that of the European-educated barrister with nationalist ambitions as eager as any to be found in the Provinces in India to the entirely negative attitude of the Wa head-hunter or the tribesman of the Chin Hills, whose sole political emotion is 20 probably an inherited antipathy for, and suspicion of, his cousin in the plains

I'm isolation.

391. The steep and densely wooded mountains on the north and north-west of Burma, where it marches with Assam, Manipur, and Bengal, cut off access from India, and on the east, where its 25 neighbours are the Chinese province of Yunnan in the north, and French Indo-China and Siam in the south, effectively prevent intercourse with adjacent countries save by a few difficult caravan rontes Between continental India and Burma intercourse is and must be wholly by sea, and Rangoon is 700 miles by sea, a forty- 30 eight hours' voyage, from Calcutta, and 1,000 from Madras In these circumstances it is not surprising that the influence of India upon Burma has been of the slightest, and to this we should add that, Buddhism being the prevailing religion, caste and communalism are unknown, though there are certain racial cleavages, and that the 35 women of Burma are regarded socially and politically as on an equality with men The Burmese language is spoken by the great majority of the inhabitants, though there are numerous local Of the total population some 10,000,000 are Burmans, dialects 1,250,000 Karens, and 1,000,000 Shans inhabiting for the most part 40 the frontier tracts, and of the non-indigenous races the most numerous are Indians, who number approximately 1,000,000

Summary of British connection with Burms 392. Trading relations between the United Kingdom and Burma began in the latter part of the seventeenth century, but it was not until 1824 that, in retaliation for the invasion of Manipur and Assam 45 by Burmese forces from Arakan, British troops from India were landed in Burma and seized Rangoon and the Tenasserim Coast,

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which by the Treaty of Yandabo in 1826 were, with Arakan, ceded to Great Britain In 1852, following a series of outrages on British subjects by the Burmese Governor of Rangoon, for which no redress could be obtained from the Burmese King, the second Burmese War ended with the annexation of the province of Pegu, and ten years later the coastal districts of Tenasserim and Martaban, with Rangoon and Pegu, were formed into a Chief Commissioner's Province friendly relations which had been established in 1867 with King Mindon Min came to an end with the accession in 1878 of King Thibaw, who maintained himself on the throne by the ruthless 10 massacre of all who opposed him, oppressed British traders, and finally entered into negotiations for alliances with European powers In 1885 the Government of India presented the King with an ultimatum, which was rejected, a British force entered Mandalay without resistance, the King was deposed, and on 1st January, 1886, 15 Upper Burma was by Proclamation annexed to the British Crown Many years were occupied in restoring order, but gradually a regular system of administration was established, and in 1897 Upper and Lower Burma were constituted as a single Lieutenant-Governorship, with a Provincial Government and a Legislative Council, which 20 originally comprised nine nominated members (including four

officials), and was gradually expanded until in 1920 it contained thirty members, two elected by the European Chamber of Commerce and the Rangoon Trades Association, and twenty-eight (including 25 twelve officials) nominated by the Lieutenant-Governor.

## Attitude of the political parties to separation

393. The Declaration of 1917, which beld out prospects of advance Burna and to Burma no less than to other Provinces, encouraged the growth reforms. of a vigorous Home Rule movement, and also, as an immediate 30 objective, a strong demand that Burma should enjoy as fully as the rest of India the advance towards responsible government made possible by the reforms of 1919. A series of deputations of Burman political leaders between 1918-1920 pressed for the application to Burma without restriction or diminution of the dyarchical system of 35 government granted to the Provinces of India by the Act of 1919. In 1921 the Secretary of State decided to recommend to Parliament the extension to Burma of the reforms inaugurated by the Act, and the recommendation was endorsed by the Standing Joint Committee of Parliament on Indian Affairs on 25th May, 1921.

394. Particular questions, such as the franchise suitable to conditions in Burma, the composition of the Legislative Council, and the subjects to be transferred to the administration of Ministers, were remitted to a Burma Reforms Committee presided over by Sir A. F. Whyte. The proceedin's of the Committee were hampered by a 45 boycott organised by the General Council of Burmese Associations and the societies affiliated to it, who demanded a much more advanced

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Constitution than had been accorded to India and refused to have anything to do with dyarchy, a refusal persisted in until the autumn of 1932; but despite the boycott the Committee was able to carry through its task, and following on its Report Burma was constituted 5 a Governor's Province in January, 1923, with a reformed Legislative Council, and a dyarchical system corresponding to that in other There was, however, one notable difference; for in Provinces. Burma the departments transferred to Ministers included from the ontset the Forest Department, which in Burma is of peculiar import-10 ance, not only because of the considerable revenue derived from the forests, but also because no less than three-fifths of the total area of the Province consists of forest land.

395. The active political leaders in Burma who accepted as a first coinstalment the measure of self-government afforded by provincial and anti-15 dyarchy, did not on that account a bandon their conviction that both separaon racial and on economic grounds it would be better for Burma to pursue her own distinct line of development at the first possible opportunity, and foresaw that such an opportunity would be likely to occur after the ten-year period prescribed in the Act of 1919. 20 Accordingly they took their seats in the Legislative Council, and when the time came, stated their opinions freely to the Indian Statutory Commission, who reported that they had little doubt that the resolution passed unanimously by the Legislative Council during their visit to Borma in favour of separation from India was the 25 verdict of the country as a whole. On the other hand, the party which in 1922 had boycotted the Whyte Committee and had refused to enter the Legislative Council or co-operate in a dyarchical form of government, stood aloof and tendered no evidence before the Commission. Their unhelpful tactics have tended to obscure the 30 fact that they too seek, and have steadfastly sought, as their ultimate objective, Burma's independence of India and the development of

the country on separate lines. The difference between them and what we may call the co-operating parties has, we think, been mainly one of tactics. Whereas the latter are and have been prepared to accept what is granted to the rest of India as a stepping stone to 35 something better, the non-co-operators persist in rejecting every offer made and in standing out on every occasion for the impossible, in the belief that thereby they increase the prospect of extracting from the British Government and Parliament a more liberal constitutional scheme for Burma. They took the opportunity afforded 40 by the election campaign in 1932 (which was to give the electorate a means of expressing through their elected members their views on the question of separation) to excite a wave of feeling not so much against the idea of separation as against the Constitution for a separated Burma outlined by His Majesty's Government at the 45 close of the Burma Round Table Conference, on the ground that it, too, was, as it undoubtedly and inevitably is, dyarchical in nature. Having decided to reject the Constitution held out as a concomitant

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of separation, they found it difficult to distinguish this policy from opposition to separation in the abstract; and, describing themselves for the purpose of the election as "anti-separationitis," they were driven to advocating the only possible alternative, that is, inclusion in the Federation.

Both parties desire asperation,

396. We have satisfied ourselves by discussion with the Delegates from Burma representing the anti-separationist parties that they have no real desire to see Burma included in an Indian Federation; and indeed they frankly admit that on their own terms they would unhesitatingly prefer separation. The policy they have adopted 10 contemplates only the inclusion of Burma in the Indian Federation on the basis of special financial and fiscal conditions (which so far as we have been able to understand them would be inconsistent with the fundamentals of a federal system), and on the understanding that at ber chosen moment Burma would be at liberty to secede. We 15 have no besitation in describing this policy as wholly impracticable, and we can affirm that the Delegates from India who have been associated with us have just as little besitation in ruling it out as incompatible with the conception of Federation. Its adoption by the Burman anti-separationist leaders is to be explained, we believe, by 20 the mistaken idea that if Burma, as a unit of the Indian Federation, were to take part in such further advances towards full responsible self-government as may he made by the Federation, she would on leaving it at the moment of her choice start off on her own separate course so much further forward in the direction of her ultimate 25 constitutional goal. Criticism in detail of this conception of future possibilities would involve us in dangerous fields of speculation; and we think it sufficient to record our opinion that, even if Burma could be permitted to enter the Indian Federation and to leave it at will, it is certain that Parliament would still regard it as its function to 30 regulate her constitutional status and her relations with other possessions of the Crown. The inference which we draw from our examination of the course pursued by the Burman anti-separationists is that, in fact, they desire the separation of their country from India, hut are distrustful of the consequences which may follow if 35 the step is taken now; and we see no reason to dissent from the conclusion at which the Statutory Commission arrived that "so far as there is public opinion in the country it is strongly in favour of separation"; nor do we believe that a recommendation in this sense would seriously offend Burman sentiment in any quarter.

397. The question is not, however, one to be decided solely on Separation justified on justified on considerations of sentiment. The Statutory Commission adduced practical many other most cogent grounds for the separation of the two grounds. countries—the absence of common political interests with continental i India, the constant and increasing divergence of economic interests. the financial inequities (as they appear in Burman eyes) which association with India inevitably entails. They were also of opinion

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that separation should take place at once. "We base our recommendation," they observed, "that separation should be effected forthwith on the practical ground that no advantage seems likely to accrue from postponement of a decision to a future date. The constitutional difficulties of securing Burman participation in the Central Government of India are not prospective but actual. They will grow with every advance in the Indian Constitution and will prejudicially affect not Burma only but India itself." By the emergence into the field of practical politics of the proposal for an Indian Federation these arguments are greatly reinforced. It may be some time before the Federation is actually in operation; hut already there are projects directly or indirectly ancillary to it which are rapidly taking shape, and the more deeply Burma became involved in these as a result of her present position as a Province of British India, the more difficult would be her disentanglement from them hereafter. We are, therefore, clearly of opinion that the separation of Burma, if it is to be effected at all, should not be postponed.

### Commercial Relations between India and Burma

398. We should have no hesitation at all in endorsing the conclusion arrived at by the Statutory Commission, if it were not that separation grave doubts as to the material benefits likely to accrue to Burma as a result of separation have been expressed by persons well qualified to bold authoritative opinions on the complex problems involved. It may be an invidious task to balance national aspirations and ti, test less ew turk . each bars, thoras are estimates arriance transmission that it would be a sorry concession to Burman sentiment if we were to recommend separation without weighing carefully the possibility of a serious diminution, whether immediate or prospective, of material prosperity. We have alluded to the increasing divergence of economic interests to which the Statutory Commission drew attention; and further evidence of this divergence has been provided by events since the date of their Report. It is said that if Burma were separated from India she would be free to develop her own fiscal policy on lines which are impossible for her while she is tied to India, and that only by separation can she secure the freedom to do so. The matter is, however, not quite so simple. Separation would undoubtedly enable Burma to evolve a fiscal policy more suited to her peculiar needs than the high tariff policy of the Government of India; but it takes time to develop a policy, and still more to gather its fruits, and separation must have consequences of immediate effect, both financial and economic.

399. An apportionment of assets and liabilities between the two Governments would have to be made, as well as of revenues and separation. charges which are now classified as central. The Statutory Commission examined the probable results of such an apportionment,

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and a more detailed but still incomplete investigation of this aspect of the question was made after the first Round Table Conference, the results of which are embodied in the Report known as the Howard-Nixon Report The joint investigators were not able to agree as to the basis of adjustment to be adopted in respect of certain 5 charges, and the statistics on which they worked have been substantially affected by the general economic depression, to which Burma, depending almost entirely on the export of natural products, has been exposed as severely perhaps as any country in the world But we are satisfied, after examining the more recent statistics 10 furnished to us by the Government of Burma, that Burma is at any rate not likely to be any worse off in respect of net revenue as a result of separation, and indeed, if economic conditions improve, may gain considerably. But as regards the immediate effects on trade the position is not so clear. A very considerable trade between 15 Burma and India, averaging in value in normal times some 40 crores (or £30 million) a year, has grown up in the 48 years since Burma was fully annexed to India and it has grown up on a tarifffree basis, the Province of Burma being within India's tariff wall These conditions would be wholly altered by the fact of separation, 20 Burma would cease to be an economic, no less than a political, part of British India, and if nothing is done to prevent it, the tariff of each country would apply against the other

Effect of tariffs on India-Burma trade

400 We conceive that one essential provision in any Constitution that may be devised for Burma in the event of separation will be 25 that existing Indian laws shall continue to have effect in Burma after separation unless and until amended or repealed by the Burma Legislature Some such general provision would in any event be necessary in order to provide the basis on which the administration may be carried on without interruption, but if it extended to the 80 Indian Tariff Acts and the Schedules attached to them the result would be that Burma would bave to levy the customs duties prescribed by these Schedules on all goods imported into Burma, including goods imported from India, which hitherto have been free from duty, and similarly with India in the case of goods 35 imported from Burma. Of Burma's total exports, averaging in normal times about 56 crores (£42 millions) per annum, about 48 per cent (or £18 millions) goes to India, representing about 14 per cent of India's total imports Of Burma's total imports, averaging in normal times about 28 crores (or £21 millions) per annum, about 40 42 per cent (or £9 millions) are from India, representing 5½ per cent of India's total exports. Thus the India-Burma trade constitutes nearly half of Burma's export and import trade and an appreciable portion of that of India, and it is clear that the heavy duties of the Indian protective tariff might have a serious effect upon it.

Suggestions for a Trade Convention 401 We recall that the Burma Sub-Committee of the First Indian Round Table Conference, while advocating the principle of separation, expressed the bope that it might be found possible to

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conclude a Trade Convention between India and Burma, and stressed the importance of causing as little disturbance as possible of the close trade connections which at present exist between the two countries. Detailed suggestions for such a Convention were submitted to us by the Burma Chamber of Commerce, and we have had the advantage of studying memoranda on the subject furnished by

the Delegates who represented that Chamber and the Burma-Indian Chamber of Commerce and who also gave oral evidence before us. Briefly, the suggestion is this: that until such time 10 as the two new Governments are able themselves to conclude a Trade Agreement, the existing fiscal relations between India and Burma should be maintained by special statutory provision in the two Constitution Acts. This suggestion, if adopted, would leave Burma bound for the time being to impose on imports from other 15 sources than India the duties scheduled to the existing Indian Tariff Acts. But one of the principal considerations urged in favour of the separation of Burma from the rest of India is that the heavy duties imposed by India on certain classes of manufactured goods for the protection of Indian industries are detrimental to the interests of 20 Burma, which demand the cheap importation of such commodities as manufactured iron and steel. The Chamber of Commerce would meet this difficulty by giving liberty to both countries to alter their tariffs (which would at the outset be identical) in relation to third countries (subject to arrangements designed to prevent the import of 25 goods on which the tariff might have been lowered into either India or Burma, as the case might be, in order to re-export to the other), with a proviso that neither country shall without the consent of the other vary existing tariff rates in respect of an agreed list of goods or commodities, that is to say, goods or commodities in respect of 30 which either India or Burma enjoys, by virtue of the existing freedom of trade hetween them, a preference so valuable that any reduction of it would seriously affect the trade in that article between the two countries

402. These proposals are at first sight attractive, but they rest on The 35 a hypothesis which we believe is not likely to be substantiated in entirelised. fact. The Memorandum of the Chamber of Commerce strongly deprecates the assumption that the Government of Burma will need any additional revenue which might result from taxing the India-Burma trade. It assumes on the contrary that as the result of the 40 financial settlement with India, Burma will gain to an annual extent sufficient, even in the present depressed conditions, to give her a small surplus with which to meet new expenditure. We are informed that the Government of Burma do not share this view, and anticipate that, even allowing for a favourable settlement, the future Govern-45 ment of Burma will need to raise some revenue from trade with India. But however that may he, it is obvious that whatever gain the settlement may bring to Burma, it will involve an approximately equal loss to Indian revenues; and the Government of India, we understand,

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have no doubt at all that they will have to look to taxes on the trade with Burma to make good some of this loss. It may be assumed therefore, that after separation it will not be possible, on the Indian side at any rate, to maintain even for a short period an India-Burma 5 trade free of customs duties; and when one invasion of the free trade system has been made, compensating adjustments will prohably be required all round.

403. A departure from complete freedom of trade need not in all Moderate cases seriously prejudice trade between India and Burma, which 10 depends not so much on the absence of duties as on the margin of protection afforded against competing goods from other sources; and it may well he that in respect of several classes of goods exchanged by Burma and India the imposition of a light import duty would not materially affect the flow of trade. This, however, could only he

tariffs not

ascertained by expert examination of the trade item by item, and 15 we are of opinion that the first step to be taken is that Burma and India should agree on a list of goods on which duties could safely be imposed up to a prescribed limit sufficient to secure the India-Burma trade against dislocation It would also be necessary to deal with the question of substituting equivalent import duties for the 20 excise duties at present imposed in India on Burma products, and To secure its object, such an agreement would have to vice versa be operative from the moment of separation, and it must therefore have been concluded before the new Governments are established, ie, between the existing Governments. But an agreement by the 25 existing Governments can only be made binding on the Governments to be established by the new Constitution Acts by statutory provision in both Acts

Burma may reduce existing high tentits on certain

404 Though the primary purpose of any agreement imposed npon the new Governments of India and Burma by the Constitution 30 Acts would be the regulation of India-Burma trade with the minimum distuibance of its existing conditions, this cannot be achieved in The imposition of duties on goods previously exchanged between India and Burma on a no duty basis may affect the questions of the duties properly leviable by either country on competing 35 goods from other sources Moreover. Burma may desire to reduce the high protective duties at present imposed by the Indian tariff on certain manufactured goods imported from outside This is recognised by the Burma Chamber of Commerce, and their representative in his supplementary memorandum makes specific suggestions for 40 dealing with the case, and also with the question of re export from the country of the lower tariff to the other country The agreement should, therefore contain as its secondary purpose provisions enabling either country to vary its tariffs on goods from outside sources but within prescribed limits so as not to defeat the primary 45 durpose for which it is made

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Period during Trade Couvention should continue in force,

405. An agreement of this kind embodied in the Constitution Act, even though mutually advantageous to the two countries, must necessarily constitute to some extent an encroachment upon the fiscal liberty which Burma after separation is to enjoy, and which India already enjoys The encroachment would be less if the agreement provided full opportunity to both parties to vary details by mutual consent during its currency, but it is in any event desirable that the agreement itself should continue for the shortest period which is compatible with the securing to those concerned in the India Burma trade of a reasonable measure of certainty as to the 10 immediate future. One possible course would be to impose the agreement for an undefined period subject to denunciation by either country at reasonable notice say twelve months 
If the agreement proved to be congenial to the needs of both, such an arrangement might promise the greatest prospect of stability, but there is a risk 15 that national amour propre might lead one or both of the new Governments to denounce it as soon as it had the power to do so. with the result that the agreement might last for little more than the period of notice Another course, advocated by the Burma Chamber of Commerce, would he to enact that the agreement should 20 continue until replaced by another concluded hetween the two new Governments This, however, would give one Government if it found that it enjoyed an advantage at the expense of the other the option of retaining that advantage indefinitely, nor do we think that it would be fair to impose upon the future Government of Burma 25

in the period immediately following separation the heavy burden of negotiating an intricate Trade Agreement. In our opinion, it would be best that the agreement should last for a definite period of one or more years, either Government having the right thereafter to give 30 twelve months' notice to determine it; and that it should contain provisions for the mutual adjustment of details from time to time during its currency, where both parties desired such adjustments to be made.

406. We recommend, therefore, that the Governor-General of Statutory 35 India and the Governor of Burma shall he respectively empowered in recomtheir discretion (1) to apply for a prescribed period to the exchange meniod. of goods and commodities between India and Burma a scale of customs duties which shall have been mutually agreed between the existing Governments of India and Burma, or determined by 40 His Majesty's Government in default of agreement, the scale not to be susceptible of variation during the prescribed period except by mutual consent; and (ii) to apply to specified classes of goods and commodities imported into either country from outside sources such variations of the duties imposed by the Indian Tariff Schedules at the

45 date of separation as may have been mutually agreed by the existing Governments of India and Burma before separation, or determined by His Majesty's Government in default of agreement, or as may be mutually agreed thereafter by the two Governments during the prescribed period.

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407. The negotiations for a Trade Agreement might also be Immigraextended to the regulation of the immigration of Indian labour into Burma for the first few years after separation. We allude elsewhere labour. in our Report to the desirability of withholding from Indian-British 5 subjects the unrestricted right of entry into Burma after the separation, in order that the Government and Legislature of Burma may be free to regulate the influx of cheap labour in competition with the indigenous sources of supply. The problem is already acute, as the Royal Commission on Labour in India have recorded, and we 0 endorse the opinion expressed by that Commission that the best way of solving the problem is by mutual agreement between the two Covernments concerned. But the period immediately after separation is evidently not the most suitable opportunity for negotiating an agreement on a matter which is peculiarly capable of provoking 5 lively animosities, and we are of opinion that, whether or not in direct connection with an agreement to regulate trade relations, at any rate at the same time, an agreement to control the influx of Indian labour into Burma should be concluded between the existing Governments. Such an agreement, which might conceivably run 10 for the same period, and be determinable on the same notice, as the Trade Agreement (though this is a point on which we wish to make no definite recommendation), would also need to be given statutory force by the two Constitution Acts, so as to be effectively binding on the new Governments for the period of its validity.

408. The difficulty of regulating the economic relations of India and Burma in the period immediately following separation has presented itself to us as the most serious obstacle to a recommendation in favour of separation, which on all other grounds seems plainly to be indicated. We were much impressed by the views of the 30 Delegates representing commercial interests, both European and Indian, on the disturbance of India-Burma trade which might result from separation. We believe, however, that an agreement such as we have suggested would enable both countries to tide over the

critical period, and in these circumstances we regard ourselves as justified in recommending that the separation of Burma from India 35 should be effected simultaneously with the introduction of the constitutional changes which we have recommended in the case of the other Provinces of India

### (2) THE BURMA WHITE PAPER

409 Before considering in detail the proposals in the Burma 40 White Paper, we have certain preliminary observations to make. It is in the first place evident that a new Constitution for Burma, whatever may he its precise form, must differ in many respects from that which we have recommended in the case of the Governors' Provinces in India The Government of Burma will be a unitary 45

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government, and therefore no question of any distribution of executive or legislative powers will arise, since the Government will unite in itself all the powers which in a Federated India will be divided between the Federal and Provincial Governments

410 Next, we desire to draw attention to some of the legal 5 consequences of separation On the Indo-Siamese frontier of Burma lies the territory known as the Karenni States, whose independence was guaranteed by a treaty with the former Burmese Kingdom in 1875 These States are not a part of British India, but are never theless part of "India' as defined by the Interpretation Act, 1889, 10 because under the sucerainty of the Crown exercised through the Governor-General They are under the direct control of the Government of Burma, jurisdiction in them being exercised by the Governor on behalf of the Governor-General by virtue of powers delegated under the Foreign Jurisdiction Act, but their constitu- 15 tional position seems to differ in no respect from that of Indian States in which the Crown exercises jurisdiction by treaty, usage or otherwise The jurisdiction therefore which is at present exercised hy the Crown through the Governor-General of India, and through the Governor of Burma by virtue of the powers delegated to him, will 20 have to be resumed into the hands of the Crown, and thereafter exercised directly through the Governor of Burma, without the intervention of the Governor-General of India The Burma White Paper rightly proposes that the first of these objects shall be secured hy the Constitution Act itself, for the second a new Foreign 25 Jurisdiction Order in Council will clearly be required

411 We assume that provision will be made for the continued application to Burma after the separation from India of all Acts of the Impenal Parliament which extend at the present time to Burma as a part of British India But there are a number of other 30 Acts of Parliament which apply to His Majesty's overseas possessions exclusive of British India, and when Burma ceases to be a part of British India, it would seem that those Acts would, in the absence of provision to the contrary, apply to Burma as they apply elsewhere. Thus, all Acts which are declared to extend to "colonies" would at 35 once become part of the law of Burma, since "colony" is defined in the Interpretation Act, 1889, as "any part of His Majesty's dominions exclusive of the British Islands and of British India" Out attention has been drawn in this connection to the Colonial Laws Validity Act, 1865, some of the provisions of which appear to 40 be quite inconsistent with any Constitution which we could contemplate for Burma We think that special provisions will be equired in the Constitution Act to deal with this point, and we

agree also with the Secretary of State that no room should be left for 45 any suggestion that the new status of Burma will be assimilated to that of a Crown Colony Apart from this, it will obviously be necessary to make provision for the continued application to Burma

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of existing British Indian laws, until repealed or amended by the Burmese Legislature or other competent authority, but there will have to be some machinery for adapting those laws to meet the new constitutional situation, as, for example, by substituting the 5 Governor of Burma for the Governor-General in Council, where the latter expression occurs in an existing Act

412 It is proposed that the Constitution Act should declare that Agreements all rights and obligations under international Treaties, Conventions at present or Agreements which before the commencement of the Act were upon 10 binding upon Burma as part of British India shall continue to be Burma as part of binding upon her 1 A similar provision is to be found in section 148(1) of the South Africa Act, 1909, the Act which constituted the Union India of South Africa In that case, however, the States or Provinces by or on whose behalf the Treaties, Conventions or Agreements had been 15 made became part of a new and larger organism, which necessarily assumed responsibility for all the existing obligations of its constituent members, but we are not clear that the case of a State which becomes autonomous by separation from a larger State is precisely analogous, at any rate so far as rights as distinguished from obligations are 20 concerned, and we are disposed to think that the matter may require some further examination

413 We should mention here that the Delegates from Burma, both in a Joint Memorandum signed by several of them and orally before us, expressed the hope that His Majesty might be pleased to adopt 25 the title of King-Emperor of Burma It would not be proper for us to express any opinion on this suggestion until His Majesty's pleasure had been taken, but we may perhaps be permitted to make the following observations His Majesty's full style and title is "George V by the Grace of God of Great Britain, Ireland, and of the British 30 Dominions beyond the Seas King, Defender of the Faith, Emperor of India ', and Section I of the Government of India Act therefore correctly describes the territories for the time being vested in His Majesty in India as governed 'by and in the name of His Majesty the King, Emperor of India 'From this it is clear that, though it is 35 not incorrect to speak of His Majesty in relation to His Indian Empire as "The King-Emperor, 'the expression' King-Emperor of India." is not legally a part of His Majesty's style and title Hence a reference to Burma in the Royal Title could, subject to His Majesty's consent, only be introduced by legislation, which, since the 40 Statute of Westminster became law, would require the concurrence of the Dominion Governments The Delegates also desired that the Governor should in future be known as the Governor-General of Burma, but this too is a matter on which we think that His Majesty's

Vajesty s title in relation to

1 Burma White Paper, Proposal 5.

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pleasure would have to be taken.

### The Executive

414. The proposals in the Burma White Paper with regard to the The Executive follow generally those in the India White Paper with Executive Governregard to the Executive Government of the Federation and of the month 5 Provinces, that is to say, executive power and authority is to be

vested in the Governor as the representative of the King, aided and advised by a Council of Ministers <sup>1</sup> We approve these proposals in principle, and it is not necessary to repeat what we have already said on the subject in the earlier part of our Report but there are certain divergencies between the India and Burma White Papers to 10 which we should draw attention, as well as other points which arise only in the case of Burma

Law and Order

415 The Council of Ministers will have a constitutional right to tender advice to the Governor in the exercise of the powers conferred upon him by the Constitution Act, other than powers connected with 15 certain Departments which will be reserved for the Governor's own direction and control and matters left by the Constitution Act to the Governor's own discretion, but the Governor will be declared to have a special responsibility in respect of certain matters and where they are involved will be free to act according to his own 20 judgment. The matters which it is proposed shall be reserved to the Governor's own direction and control, are Defence External Affairs, Feelesiastical Affairs, the affairs of certain Excluded Areas, and monetary policy, currency and comage With these we deal later, but we point out that they do not include law and order, 25 which will, therefore, fall within the ministerial sphere, as it will in the Indian Provinces, if our recommendations are accepted. We are of opinion that the responsibility for law and order ought in future to rest on Ministers in Burma no less than in India, and for substantially the same reasons From one point of view, the problem 30 is less difficult in Burma, because of the absence of communal feeling, but on the other hand, serious crime, especially crimes of violence, appears to be more life in Burma than in India. In proportion to population, the percentage of murders, dacorties and cattle thefts exceeds (and often greatly exceeds) the percentage in almost every 35 other Province of British India, though there is a marked absence of that form of crime known as terrorism Nevertheless though the need for an efficient and disciplined police force in Burma is manufest, we do not think that Burma should be deprived of the opportunity which in our jodgment ought to be afforded to the 40 Indian Provinces in this sphere

The Burms Police. 416 The police in Burma consist of two civil police forces —(1) the District Police and the Rangoon Police, which are organised on much the same lines as the police forces in the other Indian Provinces and whose main duty is that of detecting and preventing 45

Burma White Paper, Proposals 8-20

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crime, and (2) ten battalions of the Burma Military Police Six battalions of the latter are frontier battalions, stationed almost wholly in the excluded tribal areas contiguous to the frontiers, and may be described as a watch and ward gendarmene. Of the other four battalions, one is a reserve battalion which provides drafts mainly for the frontier battalions and is also responsible for the protection of the railways in times of internal disorder, and three are garrison battalions two with headquarters in Rangoon and one in Mandalay. These, though organised on a battalion footing, serve in the districts in small detachments as patrolling parties and as 10 a backing to the District Police, and also supply Treasury guards and prisoners' escorts. The latter service requires a well armed and highly disciplined personnel, and is entrusted in other Provinces to the so-called armed reserves of the civil police which do not exist under that name in Burma.

417 We are informed that it is in contemplation to place the six Future frontier battalions and the reserve battalion of the Military Police of Burns directly under the Governor as part of the defence organisation, though it is not intended that they shall form part of the regular 20 Defence Force or lose their primary police character If, as we understand, these battalions are at the present time stationed in the Excluded Areas in proximity to the frontiers, it would clearly be impossible to transfer them with the ordinary civil police to the control of a Minister, and the proposed arrangement seems to us a 25 reasonable and convenient one We are informed also that in times of grave internal disorder the reserve battalion, and to a limited extent the frontier battalions also, have been called upon to act as additional police outside the Excluded Areas, before recourse is had to military aid, and if in future they become part of the defence 30 organisation under the control of the Governor, it would be possible for the latter in the exercise of his special responsibility for the prevention of grave menace to the peace or tranquility of Burma to deal effectively with a threatened outhreak without the use of troops. or alternatively to place additional forces at the disposal of the 35 Minister for the same purpose

418 It is intended, we understand, that the three garrison Garrier battalions should pass under the control of the Minister responsible battalion for law and order as part of the police force of the Districts and they would thus correspond to the armed reserves of the civil police in 40 the other Provinces The frontier and reserve battalions would, however, be available as a reserve striking force in the event of serious disturbance wherever it might occur, or to provide reliefs for men on continuous duty in the districts These proposals seem to us to be well conceived. The Governor's responsibility for the 45 preservation in the last resource of law and order in Burma may well be heavier than in many of the Indian Provinces, but his position will be stronger in that he will have under his own control the

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Department of Defence and the resources which it can afford in the way of additional military police as well as of troops. We have only one suggestion to make In view of the reservation to the Governor of the Department of Defence, we are disposed to think that the 5 designation of the three garrison battalions which will benceforth be under the control of the Minister as Military Police may tend to We suggest, therefore, that some other designation confusion should be adopted, and perhaps "the Burma Constabulary' might be regarded as appropriate

419 The Governor is to have a special responsibility in respect  $T_{be}$ of (a) the prevention of any grave menace to the peace or tranquillity Governor of Burma or any part thereof, (b) the safeguarding of the financial stability and credit of Burma, (c) the safeguarding of the legitimate burne. interests of minorities, (d) the securing to the members of the 15 public services of any rights provided for them by the Constitution Act and the safeguarding of their legitimate interests, (s) the prevention of commercial discrimination, (f) the administration of certain Partially Excluded Areas, and (g) any matter which attects the administration of any department of government under the direction 20 and control of the Governor It will be seen that these special responsibilities are substantially the same as those proposed in the case of the Governor-General and Governors of Provinces, and all that we have said upon them elsewhere applies equally in the case of Burma The suggestion in the Joint Memorandum submitted

by certain of the Burman Delegates that any dispute on the question 25 whether in a particular case the Governor's special responsibilities are involved should be referred to the Privy Council for decision completely misapprehends the principle underlying the Proposals, and nothing would be more likely to check a healthy constitutional development than to make the relations between the Governor and 30 his Ministers a matter of law rather than of constitutional usage and practice. There are certain aspects of commercial discrimination in the case of Burma which are of sufficient importance to demand separate treatment, and we also leave for subsequent consideration the question of the Excluded Areas.

# The Reserved Departments

420 The subject of Defence has not the same importance in Burma as it has in India, for there is no North West Frontier problem, but, as the Statutory Commission observe, Burma has on her own borders a less definite but potential danger which, if it actually emerged in 40 concrete shape, she could not deal with single-handed So long as this is so, it is clear that the Department of Defence must remain under the exclusive control and administration of the Governor, and the more so, since the main pre occupation of those responsible for the defence of Burma must always lie in the vast Excluded Areas of 45

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the Province, which are also to remain under the Governor's control. It is proposed, and we think rightly, that the Governor should also have the title of Commander-in Chief The executive military power will be vested in him, as the head of the Executive Government, and the size of a Burma Defence Force would not in any event justify 5 the separate appointment of a Commander-in-Chief for Burma We have already mentioned the proposals which are in contemplation with regard to the transfer of certain battalions of the Burma Military Police to the defence organisation The personnel of these battalions at the present time is, we understand, for the most part Indian being 10 drawn from men who have served their time with Indian regiments, and whether as time goes on it will be found possible to replace these with Burma personnel is not a matter on which we are competent to express any opinion We may refer to what we have said on this subject in connection with Indian army problems, but we desire 15 also to point out that the policing and protection of the Excluded Areas, which he along the frontiers of Burma and which form so large a proportion of the total area of the country, involve military considerations of a special kind which do not arise in India. We refer hereafter to the powers which the Burma Legislature will possess in 20 connection with legislation for the enforcement of army discipline

421 External affairs and ecclesiastical affairs need no comment. The affairs of the Excluded Areas raise, however, various questions which it will be more convenient to discuss separately <sup>1</sup>

422. The reservation to the Governor of matters relating to mone- 25 tary policy, currency and coinage, differentiates the Burma White Paper proposals from those of India in a very important respect In India it is proposed that the Federal Ministers shall be responsible generally for finance, the Governor-General having only a special responsibility for the safeguarding of the financial stability and credit 30 of the Federation, with a financial adviser to assist him in the discharge of this responsibility. But it has always been made clear

by His Majesty's Government that the establishment of a Reserve Bank, free from political influence, to which the management of 35 currency and exchange could be entrusted, was a condition precedent to the transfer to Ministers of responsibility for the finance of the The Reserve Bank has now been established and has Federation every prospect of success, and the condition precident will therefore be fulfilled But there is no separate Reserve Bank in Burma, nor 40 so far as we are aware, is it in contemplation to establish one, and we agree therefore that monetary policy, currency and comage is properly reserved to the Governor

423. It is proposed to empower the Governor to appoint at his Governor discretion not more than three Counsellors to assist him in the Coun 45 administration of the Reserved Departments He will also be empowered at his discretion, but after consultation with his Ministers,

1 Infra, paras 432-437

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to appoint a Financial Adviser to assist him and also to advise Ministers on matters regarding which they may seek advice duties of the Financial Adviser will necessarily cover a wider field than those of the Financial Adviser to the Governor-General of 5 India, not only because of the reservation to the Governor of matters relating to monetary policy, currency and coinage, but also because the Government of Burma will be a unitary Government, uniting itself the financial powers which in India will be shared between the Federal and the Provincial Governments 10 circumstances, we do not think that we can endorse the proposal in the Burma White Paper that one of the Counsellors may, at the discretion of the Governor be appointed Financial Adviser We assume that the proposal is based upon grounds of economy, but it seems to us that any saving in expense which might be effected 15 by a combination of the two offices would be more than counterbalanced by the disadvantages which in our opinion would result. We think that Ministers would be unlikely to avail themselves freely of the services of a Financial Adviser who was also in administrative charge of a Reserved Department and directly 20 under the control of the Governor It is also very important that the Financial Adviser should be in a position in which he could take an impartial and independent view of the whole financial situation, in relation to both the Transferred and the Reserved Departments, and if he were at the same tune one of the Governor's 25 Counsellors he could scarcely avoid finding himself from time to time in a position in which his interest in one capacity conflicted with his duty in the other

## The Legislature

424 It is proposed that the Legislature shall consist of the King The two 30 represented by the Governor and two Houses, to be styled the Senate and the House of Representatives The Senate is to consist of not more than 36 members, of whom 18 would be elected by the House of Representatives, and 18, who may not be officials, would be nominated by the Governor in his discretion. The House of 35 Representatives is to consist of 133 members of whom 119 would be elected to represent general constituencies, and 14 to represent special The Governor-General's Counsellors are to be constituencies ex officio members of both Houses for all purposes, except the right

to vote The Senate is not to sit for any fixed term, but one-quarter of its members are to retire every two years The House of Repre- 40 sentatives is to continue for five years unless sooner dissolved <sup>1</sup>

425 There are no detailed proposals with regard either to the composition of the Houses or to the franchise in the Burma White Paper, but the Secretary of State has since submitted a Memorandum, which is printed among the Records of the Committee, 45

<sup>1</sup> Burma White Paper, Proposals 21, 23 24, 25-29

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which contains valuable suggestions with regard to both these subjects <sup>1</sup> In our opinion suitable provisions can be embodied in the future Constitution Act on the basis of these suggestions, but, though we give them our general approval, there are nevertheless certain points in which we think that they require modification, 5 and to these we draw attention in the paragraphs which follow

426 We understand that, in the case of those members of the Senate who are to be elected by the House of Representatives, the intention is to adopt the method of the single transferable vote So far as this is designed to avoid the necessity of communal repre- 10 sentation, it has our cordial approval, but we do not think that it will effect its object, viz, to secure adequate representation to substantial minorities, if the proposal in the Burma White Paper is retained, whereby one-quarter of the Senate retires at the expiration of every period of two years. It has been pointed out in memoranda 15 submitted to us by the Burma Chamber of Commerce and others that at the first election, when the full number of 18 seats are to be filled and the requisite quota of votes will be eight, the European, Indian and Karen communities at any rate could count on securing the election of their candidates, but that at the ensuing periodic 20 elections, with only nine vacant seats to fill, no minority candidate could be elected unless all the minority representatives in the Lower House pooled their votes, because the necessary quota would be too large Alternative proposals have been made to meet this difficulty, but none seem to overcome it entirely, and after full 25 consideration we have come to the conclusion that the system of rotational retirement is unsuitable, and that the better plan would be to provide that the life of the Senate shall be for a fixed period of seven years, unless it is sooner dissolved. But even so the problem of casual vacancies, which always causes difficulty under proportional 30 representation systems, has to be faced, if the minorities are not to be placed in an increasingly unfavourable position as the seven years draw to a close We have considered more than one plan for meeting this difficulty, none of which are wholly satisfactory, and we think that the best course will be to provide that, where a casual 35 vacancy occurs in a seat held by the representative of a minority community, only candidates of the same community as the vacating member shall be eligible. We recognise that this to some extent introduces a communal element into the Senate, which we regret, but we do not see how in the circumstances it is to be avoided alternative suggestion was that casual vacancies should be filled by the Governor's nomination, but we have felt bound to reject this for reasons which it is unnecessary to elaborate

427 The proposals for the composition of the House of Representatives are fully set out in the Secretary of State's Memoran-45 dum, to which we have referred They provide for 119 general

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constituencies and 14 special constituencies. Of the general constituencies, 94 would be non-communal, 12 Karen, 8 Indian, 2 Anglo-Indian, and 3 European. The special constituencies are the University of Rangoon, the Burmese Chamber of Commerce, the Burma-5 Indian Chamber of Commerce, the Burma-European Chamber of Commerce, the Chinese Chamber of Commerce, the Rangoon Trades Association (European), and Labour (two Indian and two Burman). Out of the non-communal constituencies, three seats would be reserved for women. It will be observed that these proposals are 10 based upon communal representation with separate electorates. We had hoped that it would have been possible to abandon the principle of communal representation in the case of Burma, however necessary it may be for British-India; but we have reluctantly come to the conclusion that, for the present at any rate, this is an impracticable 15 ideal. It is true that there is very little religious cleavage in Burma, since, as we have already observed, toleration is a marked characteristic of the Buddhist creed. There are however racial cleavages; among the indigenous races there is a clear-cut division between Burman and Karen: and the division between the indigenous and 20 non-indigenous (mainly European and Indian) communities is as marked as is the division between the non-indigenous communities themselves. We are not to be understood as suggesting that the different communities live otherwise than in amity with one another, although the feeling between Burman and Indian, especially as 25 competitors in the labour market, from time to time becomes acute; but each community has its own culture and outlook on life, and these do not always blend. It is also to be observed that the minorities have their own representation at the present time in the Burman Legislature, and we are clear that none of them would be prepared 30 to abandon it; indeed, the Burman Delegates themselves with few exceptions, recognised, even if reluctantly, that the claim was one which must be met. We therefore accept the proposals in principle, but we are glad to observe a suggestion in the Secretary of State's Memorandum that it should be permissible for persons who are not 35 members of the communities concerned to stand as candidates for communal constituencies. We endorse this suggestion, and we hope that it may help in the course of time to break down the barrier which at present exists.

428. It will be observed that three of the nincty-four non-com- woman's 40 munal seats are, under the proposals in the Memorandum, to be reserved for women. The representative of the women of Burma informed us, however, that Burman women did not desire this reservation, and we are satisfied that this is so. In these circumstances the question arises whether these three seats should be 45 eliminated altogether or assigned elsewhere, possibly as an addition to the representation of special interests. We are of opinion on the information before us that the special interests are already adequately represented, and that the total number of the House of Representatives should therefore be 130 instead of 133.

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429. We agree generally with the proposals in the Memorandum Franchis for the franchise for the Lower House, which will result in a for House substantial increase in the electorate. The present electorate of sentelives. Burma consists of 1,956,000 men and 124,000 women; and the 5 proposals in the Memorandum will increase this number to 2,300,000 men and 700,000 women, or 23.26 per cent. of the total population.

as against 16.9 per cent. The increase in the number of women voters is very striking, the proportion to the adult female population is increased from 4 per cent to about 21 per cent, and the proportion of women to men voters from 1 14 3 to 1 3 5 In British India 10 our recommendations would increase the number of voters from 3 per cent of the total population of British India to 14 per cent, and the proportion of women to men voters from 1 20 to between 1 4 5 and 1 5, and it may be asked why Burma should be accorded such exceptionally favourable treatment. The answer to this is 15 that the standard of living is considerably higher in Burma than in India and this is reflected in a franchise which is for the most part necessarily based on a property qualification. We are informed that, despite this large extension of the franchise, the Government of Burma regard the proposals as administratively practicable and, 20 that being so, we accept them The representative of the women of Burma urged that a wifehood franchise should, as in India, be inand, having regard to the position which women hold in Burma, we should have been glad to give favourable consideration to this suggestion. We are informed however that the inclusion of 25 a wifehood franchise would increase the number of women voters to a figure approximating to 2,000,000, and that so great an increase in the electorate would present for some years to come an insuperable administrative obstacle This we can well believe, and we may point out that this qualification has been adopted in India not so 30 much on its merits as a means of reducing the disparity between the proportion of women and men voters to a ratio as low as 1 4, whereas, even without the wifehood qualification, the proportion in Burma would be approximately 1 3 5

430 The proposals of the Burma White Paper with regard to the 35 powers of the Legislature follow the same lines as those in the case of India and need no further comment except on two points. As in the case of the Indian Legislatures the Burma Legislature will have no power to make any law affecting the Army, Air Force, and Naval Discipline, Acts, but it is likely that for some time to come Indian, 40 forces will be serving in Burma, the members of which are subject to the corresponding Indian Acts, and it is clear that it should also be beyond the competence of the Burma Legislature to repeal or amend any of the latter Acts. There will also be certain restrictions on the power of the Burma Legislature to pass discriminatory 45 legislation affecting persons domiciled in the United Kingdom, but questions will also arise as to their power to pass such legislation affecting persons domiciled in British India. This, however, is a

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matter which will be more conveniently discussed later when the subject of discrimination in general is being considered

431 Since the functions of the Government in Burma after separation will extend to all matters which in India will fall within the Federal as well as within the Provincial sphere, it would seem at first sight that the Senate in Burma should correspond, whether in size or in the extent of its powers, rather to the Federal Council of State than to any of the Provincial Legislative Councils. If the House of Representatives has 130 members, the Senate, on the Indian analogy, should have a membership of nearly 100. The proposals in the Burma White Paper, however, contemplate, as we have said, a Senate of 36 members only, and we understand that this accords generally with the views expressed at the Burma Round Table Conference. We do not think that any larger body would be

15 appropriate to the circumstances of Burma, but, that being so, it must follow that the Senate must be regarded as a body having revisory and delaying powers like the Upper House in an Indian Province, rather than one possessing substantially equal powers with the Lower House, like the Council of State But since the powers 20 of the Burma Legislature will extend over a wider field than those of the Provincial Legislatures in India, we think that the Senate may properly be invested with certain powers which a Provincial Legislative Council does not possess. We accordingly recommend that though Demands for Grants should be a matter for the House 25 of Representatives alone, it should be permissible to introduce Bills, including Moncy Bills, in either House Conflicts between the two Houses should be resolved in the manner which we have recommended in the case of the Indian Provinces, with this modification, that it should be permissible for a Bill passed by the Senate, but 30 rejected by the House of Representatives, also to be referred for decision to a Joint Session

### (3) SPECIAL SUBJECTS

### (a) Excluded and Paritally Excluded Areas

432 The Burma White Paper proposes that Excluded Areas Distinction 35 should be reserved to the exclusive administration and control of Lacluded the Governor, but that Partially Excluded Areas should pass under the control of Ministers, though the Governor will be declared to breitided have a special responsibility in respect of the administration of these Areas The Excluded Areas are to be those areas which have been 40 under the existing law notified as "backward tracts", the Partially Excluded Areas are to be those which are at the present time not removed from the jurisdiction of the Burma Legislature, but which have been excluded from the operation of the Burma Rural Self-Government Act and do not return members to the Legislative 45 Council The area comprised in the first category extends to 90,200 square miles, with a population of approximately 1,900,000, the

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second to 23,000 square miles, with a population of approximately 370,000, and when it is remembered that the total area of Burma is 234,000 square miles, it will be seen that the Excluded and Partially Excluded Areas together comprise very nearly one-balf of the area 5 of the whole Province, though they are only inhabited by about oneseventh of the population Various questions arise with regard to these areas, which it is necessary to consider in some detail

433 In the first place, the distinction which is at present drawn Arbitrary between the Excluded and Partially Excluded Areas appears to be 10 to some extent an arbitrary one, and we find it difficult to understand classifica why some of the Partially Excluded Areas have never been notified hon as backward tracts, though perhaps the reason may be, in some cases at any rate, that they are of so primitive a character that they have remained practically unadministered and it was therefore a 15 matter of indifference whether they were classified in one category or the other The Secretary of State's Memorandum, which we understand reflects the views of the Government of Burma, suggests that, where an area has never been formally declared a backward tract and does not consist exclusively of hill districts, it is undesirable 20 to withdraw it from the scope of Ministers and the Legislature, and that it should therefore continue to be regarded as a Partially Excluded Area only We cannot accept this suggestion, nor do we agree that the omissions of the past should necessarily be perpetuated

in the future—Such information as we have leads us to think that the Salween district should certainly become an Excluded Area—With 25 regard to the others, our information is not precise enough to enable us to make detailed recommendations, but we are of opinion that the Government of Burma should be requested to examine the whole questions de novo and to advise whether, notwithstanding the present legal position, any districts which it is proposed should form part 30 of a Partially Excluded Area are of such a character that their notification as backward tracts would be justified, if the matter were at large

434 We have no doubt at all that the Excluded Areas should remain under the exclusive administration and control of the 35 Governor. The Joint Memorandum of the Burman Delegates expresses the opinion that there should be no wholly Excluded Areas except those included in the Shan States Federation, but the arguments advanced in support of this opinion seem to us to misapprehend entirely the reasons which underhe the proposals in the Burma White 40 Paper. We do not think that we can do butter than quote a passage from the Secretary of State's Memorandum, with which we find ourselves in complete agreement.

"It is important to remember that the word backward, which is the technical term used to denote areas notified under 45 Section 52A of the Government of India Act, 1919 may lead to a serious misunderstanding of the position. It suggests that

<sup>2</sup> Records [1999 34] Al, p 95

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the difference between these tracts and the ordinary districts is one of degree of development which will necessarily tend to disappear with time This is far from the whole truth The existing backward tracts are hill districts lying on the north, west and east of Burma and resembling in their general char acteristics the backward tracts along the eastern border of Assam Their inhabitants, mainly Kachins, Chins and Shans, differ radically from those of the plains in race, religion, law, customs, and language, and most of these differences will be bridged not by a simple process of development, but by the 10 much slower and more difficult process of abandonment of their existing culture. It is the absence of common outlook and aspirations which is perhaps the main factor militating against the assimilation of the backward tracts in the hills in the political institutions of the plains The history of the relations 15 between the backward tracts and the plains is one of opposition and hostility, and the main reason for undertaking the admini stration of the tracts was the protection of the plains feelings of antipathy die slowly in remote places, and the inhabitants of the backward tracts are still devoid of any real 20 sense of community, political or otherwise, with the plains Further, the inhabitants of the backward tracts are ignorant of conditions in the plains and those of the plains are equally ignorant of conditions in the tracts. It is true that since the annexation of Upper Burma, civilising influences have been at 25 work The Kachins come down with confidence from their hills to market in the villages of the plains and mix more freely with the plainsmen, and in some areas they have come under the influence of missionaries Kachins and Chins also are recruited to the Burma Rifles and Burma Military Police But the fact 30 remains that the plains and the backward tracts are different

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worlds with no adequate mutual knowledge and no adequate contact by which such knowledge may be readily diffused. The 'backward tracts' in Burma are admittedly not ripe for representative institutions and have not, it is believed, shown any desire for them The time will not be ripe for such a change until conditions in the tracts have undergone a fundamental change and until their inhabitants have learned to feel that they are part of a larger political whole. Such a state of affairs is not likely to come to pass within any period that can at present be foreseen. Meanwhile, the Provincial Legislature, however capable of legislating for the plains which it knows and represents, is clearly not qualified to legislate for people it does not represent and for conditions of which it has no adequate knowledge. Added to this is the consideration that law in the backward tracts is mainly customary law supplemented by simple regulations issued under Section 71 of the Government of India Act—a very refractory substance for amalgamation with acts of the Legislature."1

1 Records [1939-34], A1, p. 97.

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435. The Joint Memorandum of the Burman Delegates draws The Shen attention to certain financial arrangements in connection with the Shan States, and recommends that the contribution from Burma revenues to those States should cease and that the States should be 5 required to pay their share of the cost of defence and general administration. We think that the Delegates are under some misapprehension in this matter, for we are informed that no such contribution has been made for the last two years, and that there is no intention of renewing it. We understand the intention to be 10 that after separation the Shan States should be credited with a share of receipts from customs dues proportionate to the consumption of dutiable articles in their area, and with a similar share of income tax and other taxes which are at the present time central sources of revenue, but which will, after separation, be levied in Burma for 15 the purposes of the local Government. The Shan States will in their turn contribute a fixed sum representing the share fairly allocable to them of central expenditure which will in future be borne by Burma, and of the cost of general administration from which the States derive benefit equally with the rest of Burma. This appears to 20 us a reasonable arrangement. We should perhaps explain that the Shan States, though British territory are a quasi-autonomous area administered by the Shan Sawbwas or Chiefs under the general supervision of the Governor, and that since 1922 they have been formed into a species of Federation for certain common purposes. 25 The finances of the Federation have always been kept distinct from the provincial finances of Burma, and we think it desirable that this arrangement should continue. Special provision for this purpose will, we think, be required in the Constitution Act; and we are of opinion (1) that the share of revenue which the Shan States are to 30 receive, as indicated above, and the contribution which they are to make to Burma revenues, should be fixed from time to time by Order in Council; (2) that the States' share of revenue, when fixed, should be a non-votable bead of expenditure appropriated for the purposes of the administration of the States; and (3) that the contribution 35 of the States should not be paid directly to Burma revenues but allocated to the Governor for the same purposes. The Burman Joint Memorandum suggests that the financial settlement between

the Shan States and Burma (i.e., the determination of the share of revenue and of the State's contribution) should be referred to an impartial tribunal and should not be left to be dealt with by the 40 Governor. We understand that in fact a committee of three officers, one representing Burma, one the Shan States, with an independent chairman, has already been set up for the purpose of advising the Governor on this matter, and in these circumstances we do not think that any useful purpose would be served by the appointment of an 45 extraneous tribunal.

436. We understand the Burman Delegates also to suggest that the financial arrangements for other Excluded Areas should be the same as those for the Shan States, that their expenditure should be met out of their own revenue, and that they should have 50

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a budget separate from the general Burma budget. There does not seem to us to be any true analogy between the two cases. The Shan States are a compact area, and for all common purposes form a single organised administrative unit; this cannot be said of any of the other Excluded Areas. We think, therefore, that the Burma White Paper rightly proposes that the money required for the administration of those areas, apart from the Shan States, should come from Burma general revenues, and should be a non-votable head of expenditure. We may, however, draw attention to the fact that the forests in the Excluded Areas are at the present time, 10 and will continue to be, under the administration of the Forest Department, which since 1923 has been one of the transferred departments; and the Excluded Areas make a substantial contribution through this channel to the general revenues of Burma.

437. We have mentioned previously the Karenni States, an area 15 of 4,000 square miles with a population of 64,000 which lies on the eastern border of Burma and is not British territory. There is also a small non-British enclave known as the Assigned Tract of Namwan, which is held on a perpetual lease from China in order to facilitate frontier transit questions. It is proposed that these two areas shall 20 the treated on the same footing as Excluded Areas, and that the trifling sums required for administrative purposes in connection with them shall be treated as expenditure on an Excluded Area. In view of the smallness of the areas involved, this seems a convenient arrangement; but we assume that, since they are not British 25 territory, it will still be necessary to legislate for them by means of Foreign Jurisdiction Act procedure.

# (b) The Public Services

438. The proposals in the Burma White Paper on this subject are substantially the same, mutatis mutandis, as those in the case of 30 India, and it is only necessary to draw attention to one or two special points. The services in Burma which will in future correspond to the Indian Civil Service and the Indian Police will necessarily have different designations; but present members of the Indian Civil Service who are serving in Burma have informed us of their 35 desire to be still described as members of that Service, and to this we see no objection. In the case of Central Service officers now serving in Burma, it is proposed that those who were recruited by the Government of India for service in Burma alone should be compulsorily transferred to the service of the Government of Burma, 40 but that those who were recruited either by the Secretary of State or by the Government of India without special reference to service

in Burma should only be liable to transfer to the Government of Burma with their consent and the consent of the authority who 45 appointed them. This seems a reasonable distinction to draw, and we approve it.

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439. Burma has one Service which has no exact counterpart in Burn India, viz., the Burma Frontier Service. This is now controlled and recruited by the local Government, but it comprises officers (for example, officers transferred from the Indian Army and some others) 5 who enjoy rights guaranteed by the Secretary of State. We approve the proposal in the Burma White Paper that this service should be recruited and controlled by the Governor in his discretion, since most of the officers who belong to it would be serving in Excluded Areas under the control of the Governor.1

440. When the Burma White Paper was first published, the Medical and question of continued recruitment by the Secretary of State to Rely the Medical and the Railway Services was still under examina- Services. tion. We understand, however, from the subsequent Memoranduni submitted to us by the Secretary of State that the intention now is 15 that the proposed statutory Railway Board for Burma shall, in conjunction with the Public Service Commission, control recruitment. We have already recommended that recruitment for the railway service in India should be in the hands of the new Railway Board, and we see no reason why the same principle should not be 20 applied also in the case of Burma. As regards the question of recruitment to the Medical Service, we are informed that this matter is still under consideration, and we have not sufficient information before us to make any considered recommendation; but we are disposed to think that for the time being recruitment should continue 25 to be by the Secretary of State.

441. We desire to draw attention to what we have already said on the subject of the Forest Service in India and the need for the co-ordination of research. Our recommendations with regard to the Forest Service in the Indian Provinces are not of course applicable 30 as they stand to the Forest Service in Burma; but we hope nevertheless that arrangements may be made whereby the Central Institute for Research and the Training College at Dehra Dun will be available for Burma entrants. We hope too that nothing will be done which might exclude the possibility of an interchange of 35 officers between the Forest Services of Burma and India; and we refer in this connection to certain of the recommendations of the Burma Sub-Committee of the First Round Table Conference.

442. It is proposed that there should be a Public Service The Public Service Commission for Burma. This we regard as an essential provision, Com 40 and we think that the Constitution Act should in this respect follow mission. the Indian model.

- Burma White Paper, Introd. pars. 22.
   Records [1933–34], A2, p. 11. Supra, paras, 294 5.

  Burma White Paper, Proposale 100-104.

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# (c) Commerical and other forms of discrimination

443. In so far as this is a matter between the United Kingdom Discriminaand Burma, the proposals in the Burma White Paper, supplemented between by a subsequent Memorandum submitted to us by the Secretary of Burna and 5 State, are the same as those in the case of India, and we may refer India.

to what we have said upon the subject in an earlier part of our Report. The Burma White Paper and the Secretary of State's Memorandum, however, deal also with the question of discrimination as between India and Burma after the separation of the two countries, and this raises certain problems of its own.

444. The Memorandum to which we have referred points out that there are in Burma over 1,000,000 persons either domiciled in India or originating from some Indian Province. Some are in the permanent service of the Government, but the greater number are labourers who only intend to stay in Burma for a few years and who 15 by accepting smaller wages tend to oust the indigenous labourer and to lower his standard of living. Others are Indian money londers who advance money on the security of agricultural land and crops, and whose operations, especially in times of depression, are such as to bring about an extensive transfer of ownership from an indigenous 20 agricultural population to a non-indigenous and non-agricultural class. It is clear that in these circumstances it would be unreasonable to include in a new Constitution for Burma provisions which would in effect give to all persons domiciled in India an unrestricted right of entry into Burma; and it is accordingly proposed that it should 25 be competent for the Burma Legislature to enact legislation restricting or imposing conditions of entry into Burma in respect of all persons other than British subjects domiciled in the United Kingdom. We think that this is right, but we agree with the further proposal which is made by the Secretary of State that, with a view 30 to preventing the imposition of vexatious or unreasonable restrictions or conditions for the entry of Indians of good standing into Burma, the introduction of any legislation regulating immigration into Burma should be subject to the Governor's prior consent. Nevertheless, we hope that these matters will ultimately come to be 35 arranged between India and Burma on a conventional basis, and we refer to earlier observations which we have made on this aspect of the subject. We have also expressed the opinion elsewhere that it may be desirable that any temporary Trade Agreement made between the existing Governments of the two countries with a 40 view to tiding over the difficult period immediately after separation, when the two new Governments will probably be too fully occupied with other matters to enter into a long and intricate negotiation, should also include provisions relating to emigration and immigration.

445. There are certain legal restrictions in force at present on the 45 right of persons of non-Burman birth or domicile to compete for certain public appointments or to qualify for the exercise of certain

1 Records [1933-84], A2, p. 1.

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professions; and it is right that these should be retained. As regards the future, the power of the Burma Legislature to impose conditions or restrictions on entry into Burma should prove a sufficient safeguard. Subject to the above modifications, we are of opinion that the question of discrimination as between India and Burma should 5 be dealt with on the same lines as that of discrimination between India and the United Kingdom.

446. As regards professional qualifications, other than medical, we have nothing to add to what we have already said in the case of India. As regards medical qualifications, the position is different. 10 A local Burma Act at present entitles any person holding a British or Indian medical qualification to practise in Burma, but also empowers the Burma Medical Council to refuse to register any

practitioner who holds only a qualification conferred in a Dominion 15 or foreign country which does not recognise Indian medical degrees. The recent action by the General Medical Council, to which we have referred elsewhere, in withdrawing their recognition of Indian medical diplomas, did not affect Burma specifically, since we understand that at that time there was no authority in Burma by which 20 such diplomas were granted; but we are informed that diplomas are now granted by the University of Rangoon. The Indian Medical Act, 1933, which sets out the Indian diplomas which entitle their holders to be placed upon the Indian register does not include among them any diploma granted in Burma, but contains provisions enabling 25 Rangoon diplomas to be included in the list, if the Indian Medical Council are satisfied after investigation that the standard of proficiency prescribed by the University of Rangoon is adequate. According to our information, however, the procedure prescribed by the Act will take some time, and it is unlikely that the Rangoon diploma will in

30 fact be admitted to the list in the near future; and in these circumstances the position is one of some doubt and obscurity, especially as the Indian Act will obviously require some modification in its application to Burma after the separation of the two countries.

447. We think that all persons at present practising medicinc in 35 Burma by virtue of a United Kingdom or Indian qualification ought in any event to have that right assured to them. As regards the future, we hope that it will eventually be found possible by means of reciprocal arrangements between the General Medical Council and the Indian Medical Council on the one hand and the Burma 40 authorities on the other to arrive at a solution satisfactory to all concerned. In the meantime we think that United Kingdom or Indian qualifications which give a right to practise medicine in Burma at the date of the establishment of the new Government should continue to give that right, and that any withdrawal of it 45 by any Burma authority should be appealable to the Privy Council, whose decision should be final and binding on both parties. We

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think also that the new Government of Burma would be well advised to consider whether it would not be to their advantage to make arrangements with the Indian Medical Council, subject to the consent of the latter, for a common medical register for both 5 countries. An arrangement on these lines has been made, we understand, between the General Medical Council and the Irish Free State and our information is that it has in practice worked well.

# (d) The Railway Board

448. The Secretary of State has furnished us with a Memorandum Proposes 10 containing proposals for the constitution of a Railway Board to manage the Burman railways after separation. This follows in its main outlines the proposals which we have already discussed for a Railway Authority in India; but the problem is a very different one in Burma, where the railway system consists only of some 2,000 15 miles of railway, and where there are no such complications as arise in India from the existence of company-owned railways or railways belonging to Indian States. Accordingly, while the Indian Railway Board is more correctly described as a Railway Authority, the Railway Board in Burma is intended to be, in the words of the 20 Memorandum, "a Board of Directors for the one railway system owned by the State." Agreeably with this conception, it is proposed that the chief executive officer of the railways shall be ex-officio President of the Board.

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449 We agree generally with the proposals in the Memorandum, subject to the following modifications. We do not think that the Financial Adviser should be a member of the Board, for the same reasons which in our view make it undesirable that he should also be one of the Governor's Counsellors since his duty and interest might at times be in conflict. We think, nevertheless, that there should be a member of the Board with special financial experience Secondly it has been represented to us that the proposed ineligibility for membership of the Board of persons who have contractual relations with the railways would in the case of Burma unduly restrict the field from which suitable members might be selected We are informed that the Government of Burma recognize the force of this contention, and suggest the inclusion of provisions similar to those which are to be found in the Rangoon Port Act the effect of which is to make a personal interest in a contract a disqualification either for membership or for participation in a discussion of matters relating to such a contract. This suggestion ments, we think, favourable consideration. Thirdly, it seems to us that the Railway Board in Burma ought to be in a position to begin its operations contemporaneously with the establishment of the new Government, and that legislation for this purpose will therefore be necessary before the separation of the two countries It would obviously be inappro priate for the present Legislature in India to enact such legislation,

1 Records [1933 34] A2 p 7

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and we think therefore that it must be enacted in the Constitution Act itself, though it may well be found convenient to leave some of the detailed provisions to be prescribed by Order in Council

# (e) Constituent powers, the Judiciary, Audit and Auditor General Advocate-General

450 The recommendations which we have made on these four subjects in the case of India will, we think, be equally appropriate, mutatis mutatis, in the case of Burma. As regards Home Audit, however, it may well be found that the amount of Burma business transacted in London will not be sufficient to justify the appointment 10 of a separate officer as Home Auditor, and in that event we think that some arrangement should be made whereby the Auditor for Indian Home Accounts should also act in an agency capacity for Burma

### (f) The Secretary of State and his Advisors

451 We have recommended that the corporation known as the Secretary of State in Council should cease to exist after the establishment of Provincial Autonomy in India, and in that event the Secretary of State in Council would equally cease to exercise any The question has been raised 20 functions in relation to Burma whether the Secretary of State for India should become in future the Secretary of State for India and Burma The Joint Memorandum of the Burman Delegates suggests that there should be a separate Secretary of State for Burma or else that the Secretary of State for the Dominions should hold the office We are disposed 25 to think that the Secretary of State for India should in future hold two separate portfolios, one as Secretary of State for India and one as Secretary of State for Burma, and we are of opinion that, though the two offices would be legally distinct, it is most desirable on practical grounds that they should be held by the same person.

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452. The Secretary of State, as Secretary of State for Burma, The ought, we think, to have a small body of Advisers, not more than two or three at the most, to advise him on Service matters; but Adviser. our recommendation in the case of India that the Secretary of State 35 should be bound in certain matters by the opinion of his Advisers or a majority of them would not be altogether appropriate in the case of so small a body, and it is for consideration whether, where Service matters are concerned, the India and Burma Advisers should not sit together and advise jointly.

(g) Financial adjustment between India and Burma

453. It is clear that on the separation of the two countries there will have to be an equitable apportionment of assets and liabilities, as a conincluding under the latter head the liability for loans and loan charges which are at present a liability either of the Secretary of 45 State or of the Government of India. The Burma White Paper

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contains no definite proposals as to the manner in which this apportionment is to be effected; but we assume that it will be necessary to appoint some impartial tribunal who will in the first place lay down the principles of the apportionment, leaving the application 5 of those principles to be worked out in detail at a later date. It will be necessary to include in the Constitution Act provisions giving the force of law in both countries to the award or awards issued from time to time by the tribunal. It is also very desirable that its work should be well advanced by the time the new Government in Burma 10 is established, and we think that steps should be taken for its appointment at as early a date as is reasonably practicable.

The same is read.

The following Draft Report is laid before the Committee by Mr. Attlee.

# PART I INTRODUCTION

1. The problem of Indian Constitutional Reform, the examination of which The has been entrusted to us, is one of a magnitude which can hardly be exaggerated. It involves the destinies of over 350 millions of our fellow-subjects. in fact, of one-fifth of the whole human race. We do not consider that it is necessary to set out at great length the material facts and the conditions of the problem, because Volume I of the Report of the Indian Statutory Commission gave an exhaustive survey, the general accuracy of which has been recognized. We would, however, recall that since that Report was published, four years ago, great changes have taken place which have profoundly modified the conditions of the problem. In particular, the Declaration of the Princes of

their readiness to join an All-India Federation, and the conclusions which emerged from the labours of British and Indian statesmen at the three Round Table Conferences are factors in the situation of the utmost importance

- 2 The whole subject-matter of Constitutional reform in India has been reviewed many times since the introduction of the Montagu-Chelmsford Reforms In addition to the very informative Reports of the Reforms Inquiry Committee, the Reports by the Government of India and the Provincial Governments on the working of the present Constitution, and the exhaustive Inquiry of the Indian Statutory Commission, there have been committees dealing with special parts of the problem, notably the Butler Committee on the relationship hetween the Indian States and the paramount power the Indian Sandhurst Committee, and the Territorial and Auxiliary Forces Committee, both of which dealt with the question of the Army in India Further there have been the three Sessions of the India Round Lable Conterence and the various sub-committees appointed to assist it, and of the Burma Round Table Conference In addition to this large volume of evidence, dealing primarily with political questions, there have been the Reports of the Committee presided over by Lord Linlithgow, on Agriculture, and that on Labour, presided over hy Mr Whitley, which provide a mine of information on economic and social matters We have ourselves been sitting for many months and have received and examined many memoranda and heard many witnesses addition, we have had the valuable assistance of representative Indian men and women who have participated with us in hearing and examining witnesses and discussions on the White Paper proposals. We cannot, therefore, complain that there is not enough material on which to work. Indeed, the mass of memoranda and evidence is almost beyond the power of any human being fully to digest
- 3 After having heard and considered the whole of the evidence and discussions on this Joint Select Committee, we have come to the conclusion that the principle on which the new Constitution for India should be founded is the right of the Indian peoples to full self-government and self-determination, and should have as its aim the establishing of India at the earliest possible moment as an equal partner with the other members of the British Commonwealth of Nations. We hold that the new Constitution should contain within itself provisions for its own development, and that such safeguards as are necessary should be in the interests of India and that the Reserved Powers should not he such as to prejudice the advance of India, through the new Constitution, to full responsibility for her own government. We are convinced that this policy is the only one that is consistent with the pledges that have been given to India, and that nothing short of that will ensure the continuance of India as a willing and contented partner in the British Commonwealth of Nations.
- 4 In our view, the problem before us is twofold. We have, on the one hand, to satisfy the legitimate aspirations of the peoples of India for self-government and so to implement the pledges given over a period of years by the Government of this country. Secondly, we have to ensure that self-government shall be given to India in such a way as to ensure that the new Constitution shall place in the hands of the mass of rural cultivators and urban wage earners the possibility of attaining to political power and that as far as possible ample protection shall he given to racial, religious and cultural minorities. We have to recognize that for more than two centuries the whole course of the development of Indian society has been powerfully influenced by the presence of the British in India. During that time Great Britain has by its action made itself responsible for the social and economic system which it has preserved in India, and it cannot escape its responsibility. In handing over power to other hands it must ensure that the interests of the weaker sections of the community are safeguarded

5 We consider it is necessary to emphasize again what is the goal of British Do policy in India That goal is nothing less than Dominion Status It is not possible for India to reach this goal at one single step, but we are in entire agreement with the Memhers of the Indian Delegation, that this goal should be clearly stated in the Constitution Act itself. We are the more insistent on this point hecause evidence has been put hefore us, with which we wish to record our entire disagreement, which purported to show that Dominion Status, with all its implications, never formed the subject of any pledge to

6 The pledges given to India have been very many We wish to state here The Declaration those which we consider to be the most material. We would first recall the historical declaration of Mr Edwin Montagu, Secretary of State for India, in the House of Commons, on the 20th of August, 1917, which was in these terms The policy of His Majesty's Government, with which the Government of India are in complete accord, is that of the increasing association of Indians in every branch of the administration and the gradual development of selfgoverning institutions with a view to the progressive realization of responsible government in India as an integral part of the British Empire "1 That declaration was embodied in the Preamble to the Government of India Act of 1919, "Whereas it is the declared policy of Parliament to which states as follows provide for the increasing association of Indians in every branch of Indian Administration, and for the gradual development of self governing institutions, with a view to the progressive realization of responsible Government in British India as an integral part of the Empire

And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction

should now he taken

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement

of the Indian peoples

And whereas the action of Parliament in such matters must be guided by the co operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility

And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge hy the latter of its own

responsibilities "

7 This was given even greater publicity and emphasis by the statement Later Pledge. of H M The King Emperor, read by H R H The Duke of Connaught, on the 9th February, 1921, to the new Indian Legislature which contained these words — For years, it may be for generations, patriotic and loyal Indians have dreamed of Swaraj for their Motherland — To day you have the beginnings of Swara within my Empire, and the widest scope and ample opportunity for progress to the liherty which my other Dominions enjoy" The same point is made in the revised Instrument of Instructions from His Majesty The King Emperor to the Governor-General of India, dated the 15th March, 1921, which states —"For above all things it is our will and pleasure that may come to fruition to the end the plans laid by our Parliament that British India may attain its true place among our Dominions'

On the 31st October, 1929, the object of British rule was explicitly reaffirmed by Lord Irwin, when, speaking with the full authority of the British Cahinet, he said that it was "implicit in the declaration of 1917 that the natural issue of Indian Constitutional progress, as there contemplated, is the attainment

of Dominion Status

Lastly there are the concluding words of the Prime Minister at the Final Session of the first Round Table Conference in January, 1931 -- "Finally, I bope, and I trust, and I pray that by our labours together India will come

<sup>1</sup> Official Reports Commons, Vol 97 col 1695

to possess the only thing she now lacks to give her the status of a Dominion amongst the British Commonwealth of Nations—what she now lacks for that—the responsibilities and the cares, the burdens and the difficulties, but the pride and the honour of responsible self government." The Prime Minister, as head of the National Government, confirmed the statement of policy then made in the words "My colleagues fully accept that statement of January last as representing their own policy."

- 8. An attempt has been made by witnesses before us, notably by Mr, Winston Churchill, to argue that Dominion Status meant something different from that which it was understood by Indians at the time to mean, and that it did not involve the grant to India of a status equal to Australia and Canada, He argued also, that Dominion Status is only a distant, remote goal which it is not practicable to take into consideration in any period of which human beings need take account. We find it difficult to reconcile that meaning with the cloquent words of Mr. Churchill in June, 1921, when he was Secretary of State for the Dominions and Colonies. In a public speech to the Prime Ministers of the British Dominions and Representatives of India, he said "there was another great part of the Empire represented at that gathering which had not yet become a Dominion, but which moved forward under the Montagu scheme in the work which began with Lord Morley and was continued by Lord Chelmsford, towards a great Dominion Status," and, further, "We owed India that deep debt, and we looked forward confidently to the days when the Indian Government and people would have assumed fully and completely their Dominion Status."
- 9. We ourselves have no doubt that in India these various statements and pledges were understood in their natural meaning, that is to say, that India could look forward to attaining within a reasonable period of time the same status as that of the other Dominions of the British Commonwealth. We feel that nothing could be more unfortunate for the creation of a fruitful partnership between the peoples of this country and India than that words understood in one sense should be subsequently explained away and given a different meaning. We agree with the contention of the Indian Delegates to this Committee when they say in their Memorandum that:
  - "Indian public opinion has been profoundly disturbed by the attempts made during the last two or three years to qualify the repeated pledges given by responsible Ministers on behalf of His Majesty's Government, Since it is apparently contended that only a definite statement in an Act of Parliament would be binding on future Parliaments, and that even the solemn declaration made by His Majesty The King-Emperor on a formal occasion is not anthoritative, we feel that a declaration in the preamble is essential in order to remove present grave misgivings and avoid future misunderstandings."
- 10. We therefore consider that this country is bound to implement this pledge of honour, and to that end we desire that the new Constitution should state beyond all cavil that it is the intention of this country to grant full Dominion Status to India within a measurable period of years, and that the Constitution itself should contain possibilities of expansion and development which may, without further Act of Parliament, realize this objective. We would express our entire agreement with the view of the Indian Statutory Commission that "The first principle which we would lay down is that the new Constitution should, as far as possible, contain within itself provision for its own development." And we would quote further from their Report: "It has been a characteristic of the evolution of responsible government in other parts of the British Empire that the details of the constitution have not

<sup>&</sup>lt;sup>1</sup> Cmd. 3997 of 1932, p. 415.

Minutes of Evidence, No. 41, p. 1851.
 Joint Committee Records, No. 10, p. 37.

Indian Statutory Commission Report, Vol. 2, p. 5.

been exhaustively defined in statutory language. On the contrary, the Constitutions of the self-governing parts of the British Empire have developed as the result of natural growth, and progress has depended not so much on changes made at intervals in the language of an Act of Parliament, as on the development of conventions, and on the terms of instructions issued from time to time to the Cown's representative The Preamble to the Government of India Act declares that progress in giving effect to the policy of the. progressive realization of responsible government in British India can only be achieved by successive stages, but there is no reason why the length of these successive stages should be defined in advance, or why every stage should be marked by a commission of inquiry. We are profoundly convinced that this method of inquiry at stated intervals has had a most injurious effect on the working of the reformed Constitution, and on Indian political life "1 They further state "We believe that what is required is a constitution which without doing this, will contain some element of elasticity enabling adjustments to be made in accordance with the conditions actually obtaining in any given province at any particular time " We are concerned to give the fullest measure of self-government to India, because the people of this country, having for so many years enjoyed responsible self-government themselves, should not deny it to other parts of the Empire We consider that the only limiting factors which prevent the grant of full responsible self-government and Dominion Status to India at the present time are those which arise not from any opposition in this country but from the facts of the situation

11 We fully recognize the great work that Great Britain has done in India, Notice 11 especially in giving her a sense of political unity which was wanting for so many years, and we are conscious of the many material advantages bestowed by Great Britain and the devotion with which the members of the Public Services have carried out their tasks as servants of India, but we recognize that one of the most striking effects of British rule has been the emergence of a national consciousness in India and the natural desire that Indians should manage their own affairs We desire to give the fullest possible expression to this national consciousness and to make provision by means of a reformed Constitution for the living forces of Indian Nationalism to be harnessed to the great tasks which confront any government in India Wc agree with the statement in the Report of the Indian Statutory Commission, that "until the demands of Nationalism have been reasonably met, enthusiasts for various reforms make common cause with every discontented element and attribute the most formidable of the evils from which India is suffering have their roots in social and economic customs of long standing which can only be remedied by the action of the Indian peoples themselves.

12. While, however, we desire to give full weight to the claims of Indian Social and Nationalism, we are not unmindful that unless political changes result in giving a better life to the ordinary citizen, they are of little value We are not blind to the fact that in India, as in most parts of the world, the masses of the people are the prey of economic exploitation. A change in the Constitution which would put the Indian rural population and the urban wage-earners at the mercy of a politically dominant section in possession of economic power might very well intensify the very culs which we desire to see eradicated While recognizing the public spirit and zeal for reform of many leading Indian statesmen, we cannot but recognize the fact that the majority of the active and politically-minded Indians belong to the privileged and well-to-do classes, that the Hindo social system is based on inequality, and that, in India as elsewhere, the power of wealth in politics is inevitably very strong We have seen many examples in Europe of nationalist movements, the supporters of which, when striving for political freedom, have

<sup>&</sup>lt;sup>1</sup> Indian Statutory Committee Report, Vol. 2, p. 5.

<sup>&</sup>lt;sup>2</sup> Ibid , p 8

professed the keenest desire for advanced social legislation, and have proclaimed a profound faith in democracy, but on many occasions when freedom from ahen rule has been obtained, the nationalist governments which followed have exhibited outstanding examples of tyranny, reaction, and social injustice, and it would, an our view, be unwise and unduly optimistic to ignore the possibility of similar happenings in India. We feel, therefore that the British people cannot discharge their responsibility to the peoples of India unless in an Constitution provision is made for the ultimate attainment of polymers. Constitution provision is made for the ultimate attainment of political power by the masses The vast majority of the Indian population considered power by the masses of the vast majority of the invertebrate population considered power by the masses of poor, illiterate and as yet maruculate peasants, who in very many reads of poor, illiterate and as yet maruculate peasants, who in very many reads are exploited by a particularly vicious system of landfordisting the land area of lands and in the plaining districts of India there is a large industrialized, or semi-industrialized, plaining districts of India there is a large industrialized, or semi-industrialized, and the land of the land o population which is hable to be exploited by a capitalist system which is apt to be less enlightened in India than even in the rest of the world We recognize that in face of the rise of nationalism it is impossible for this country to constitute it clf the effective guardian of the weaker sections of the We desire, however, to see that, as far as possible, the community Constitution should provide safeguards against exploitation of the masses.

Viute Paper repossis. 13 It is clear in our view that the White Paper Proposals fall far short of what is necessary. Indeed, if legislation is passed implementing the White Paper the Indian people will be saddled with a Constitution which establishes wealth and privilege in power not only at the Centre, but in the Provinces While a franchise as wide as is administratively possible at the present time is proposed for the Provincial Lower House, the establishment in Bengal, the United Provinces, and Bihar, Provinces where the landlord system is at its worst, of Second Chambers, designed to give weight to property owners, and the special representation given in all the Lower Chambers to the owners of land and industrial capital, will ensure, in our view, the domination of the wealthier classes so that political and economic power will be in the same hands. In the Rederal Legislature both Chambers are so composed as to be representative almost entirely of vested interests and wealth. Apart from the few seats reserved to Labour and the Depressed Classes, it is practically certain that no Place will be found for anyone who can speak on behalf of the 80 or 90 per cent of the population who own hardly any property

defigured:

14' We recognize the difficulty of providing safeguards for the prevention of the exploitation of the poorer sections of the community, without, at the same time, detracting from the measure of self-government given to India We do not think indeed, that it is possible, except in a limited degree, to place the exercise of such safeguards in the hands of the Governor or Governor. General We believe that what is required is that there should be secured in the Constitution the potentiality of political power for the masses are well aware that in the conditions obtaining in India, whatever may be the franchise, for a long period the wealthier classes will be politically dominant but we consider that, provided the franchise is widely extended, in course of time members of the wealthier classes may find it worth while to court the support of their poorer fellow-citizens and may thus eventually lead them to a realization of the possibilities of a use of political power to obtain their economic enfranchisement. It is, therefore, mainly with a view to protecting the poorer sections of the community from exploitation, that we recognize the need for safeguards, and we desire that the Constitution should contain provisions which will ensure the ultimate introduction of adult suffrage and which will preclude the possibility of an oligarchy disfranchising the majority of the citizens For similar reasons, we are opposed to the creation of Second Chambers, and to special representation being given to vested interests such as landlords, and we desire that where representation is given to Industry and Commerce 14 should be only what is necessary to give adequate represents\_ tion to particular experience which may otherwise be lacking

On the other hand we consider that it is necessary that special representation should be given to those classes of the community whose poverty renders them most hable to exploitation For this reason we approve of the reservation of seats for the Depressed Classes which may have to be continued for many years

We recognize that special provision is necessary at present to secure in the legislatures the presence of Labour representatives. We hope, however, that this may be only temporary and that with the advent of adult suffrage organized labour may find its expression in the general constituencies

15 It is necessary, in our view, that adequate safeguards should be provided Sales in the Constitution for protecting the rights of facial, communal, or cultural Minoritant The state of Europe to-day provides an abundance of instances of oppression of minorities by majorities It is unnecessary for us to emphasize the very grave divisions in India caused not merely by the rivalry of the great Hindu and Muslim Communities, but by the existence of many minor communities, and by the division of the Hindu world into numerous castes, and by the existence of the very numerous Depressed Classes Safeguards for the protection of these minorities are recognized as necessary by most of the prominent leaders of Indian thought It is, therefore, clear to us that the Constitution, while giving self-government to India, must make provision to see that it is not abused in the interests of particular sections We have given much consideration to the problem of separate and joint electorates, and, in common with all those who have examined it, we have come to the conclusion that, much as we dislike a system of communal electorates, it is impossible, in view of the grave divisions of opinion in India, to avoid it for the time being The division of the electorate into watertight compartments and the allocation of seats according to the numbers of various religious communities seems to us to cut very deeply at the roots of a real system of democratic government, but we can only hope that in course of time a realization of their common atizenship may lead the contending communities to sink their mutual suspictons and animosities Meanwhile, it is necessary to base our proposals for representation at the Centre and in the Provinces on the Communal Award.

16 In endeavouring to frame a Constitution we recognize that we are not Nature of writing on a clean slate The working of the Montagu-Chelmsford Reforms attatum. has powerfully affected Indian public opinion, and it is impossible to ignore the preferences for particular constitutional forms which have now the nanction of usage over a considerable period of years. Any constitution must satisfy Indian public opinion This is not to say that in every detail Indian views of what is desirable must be accepted, for we have to consider not merely the politically conscious but also those who as yet have little more than a dim conception of democratic government and electoral systems. Nor would it be right for us to subordinate entirely our greater and longer experience of the working of parliamentary institutions to the views of Indian politicians. but it is necessary always to bear in mind that a faulty constitution which will be worked with goodwill by those whom it most closely concerns is better than a more perfect piece of machinery which no one will operate

17 We accept the conclusions of the Round Table Conference as embodied Federation. In the White Paper, that the new Constitution for India must be Federal We recognize, however, the serious difficulties involved in the attempt to lederate units of very different internal constitution, but it is essential, if India is to be a nation, that British India and the Indian States should be associated The fact that the Central Legislature will be composed of elected representatives from self governing Provinces, and the nominees of the Rulers if States, in many of which there is not even a shadow of democratic institutions, has necessarily very powerful repercussions when consideration is liven to what constitutional arrangements are best at the Centre We loubt whether this fact has been sufficiently present to the minds of Indian politicians It would, of course, solve many difficulties if from the start

the representatives of the Indian States in the Central Legislature were elected, but we recognize that it is impossible for the British Parliament to dictate to the Rulers of the Indian States what form of Constitution they should adopt, and that to attempt to lay down any condition to this end would be to wreck all chances of Federation. But we would like to record our opinion that it would make for constitutional stability and for the growth of a real Indian national consciousness if at least in those States where representative institutions exist those sent to a Central Legislature should be chosen directly or indirectly by the people.

aubility.

18. The demand of Indian politicians for responsible government has been stressed over and over again and was reiterated by the Indian Representatives who were our colleagues on the Committee. We are emphatically of the opinion that where responsibility is given it must be real. It involves such an amount of freedom from external control as will allow of profitable experience being derived even from mistakes. A form of responsibility where there is power in some other authority to step in and save people from the consequencies of their own errors, except in extreme emergencies, is unreal. We have been impressed, as, indeed, were the Members of the Indian Statutory Commission, with the fact that under the Montagu-Chelmstord Retorms there was a tendency to breed irresponsibility. The fact that in the Legislatures it was possible for elected representatives to vote against unpopular but necessary measures, secure in the knowledge that a Governor or Governor-General would he at hand to set things right was, in our opinion, a very unfortunate feature of the last ten years. Equally unfortunate, in our view, was the constitution of the Central Government, whereby an irresponsible Executive was faced by a Legislature with little power of control. Responsible government in the minds of many Indians is considered necessarily to mean the British Parliamentary system. It is almost inevitable that the long course of education of Indians in English ideas and on English historical and constitutional text-books should have made this conception almost ineradicable. We are conscious that our Indian colleagues have been apt to regard any variation from what we may call the Westminster model of constitutional government as derogatory to their status as fellow-citizens in the British Commonwealth of Nations, and as conceding something less than they consider is their due. As a matter of fact, our own system of responsible government has no exact reproduction outside the British Commonwealth. while there are examples of responsible government on entirely different models, as, for instance, in the United States of America. We recognise, however, the strength of this conviction on the part of Indian politicians, and we consider that India should be given the fullest opportunity of trying out the British system in the Provincial sphere with as little interference as possible. We think it unlikely that there will he uniform constitutional development in all these Provinces, and, indeed, we think it desirable that the Constitution should be sufficiently flexible to allow of variation and adaptation to the very varied conditions obtaining.

auponalbility t the Centre. 19. We think it essential that real responsibility should be conceded at the Centre. There is no doubt that Indian sentiment strongly demands it, and would consider a Constitution which provided for only some slight or illusory responsibility at the Centre as a denial of India's proper status. There is, too, a further strong argument against giving responsible government in the Provinces and withholding it at the Centre. India has been united for but a short period of time relative to her long history. While the sentiment of Nationalism is strong, there are also powerful tendencies towards Provincialism. There is grave danger that if responsibility were conceded in the Provinces and not at the Centre there might be a growth of separatist feeling. The parts would be developed at the expense of the whole, and the hard-won unity of India, which she owes very largely to the British people, would be shattered. We consider it is essential the Centre should be, as it were, a focal pon.

for Indian Nationalism. At the present time the Congress appears to very many Indians as the most vital expression of their nationalist aspirations, and it has been a regrettable fact during the years which have elasped since the Montagu-Chelmsford Reforms that Congress has been to a large extent a body functioning outside the Constitution. It is our desire that Indian Nationalism should find its full expression within the Constitution, and we think this is only possible if real responsibility is given at the Centre as well as in the Provinces.

20. On the other hand, we do not consider it likely that the constitutional Tangements for a unitary state with a population of forty or fifty millions is arrangements for a unitary state with a population of forty or fifty millions is likely to he suitable for a country of 350 millions and, in fact, there is no country in the world with a population anywhere approaching that of India in which the British system has been put into force. We have to recognize that the form of government applicable to a unitary state is not necessarily that which is best adapted for a federation, while, as we have pointed out above, the fact that the Federation is composed of two categories of Federal units of different constitution, makes it difficult to believe that a system modelled precisely on that in force at Westminster would function effectively.

21. We consider that there should be no reserved subjects in the Provinces. We do not think that it is necessary for us to emphasize or enlarge on the disadvantages of Dyarchy which were very fully discussed in the Report of the Indian Statutory Commission. No evidence submitted to us has, in our view, shown their considered opinion to he incorrect. The White Paper suggests three subjects for reservation at the Centre. We see no reason why India should not have as full a control over her external affairs as any other Dominion. She is a member in her own right of the League of Nations. We agree, however, that the department of foreign affairs dealing with the relationship of the Viceroy and the Indian States should be reserved. We consider that the Ecclesiastical Department should be abolished and such functions as the provision of chaplains should be transferred to the Department of Defence On the other hand we recognize that for some years defence must be reserved. The Indian Statutory Commission stated that the great obstacle to giving full self-government to India was the fact that the Military Forces were composed partly of Indian troops with officers of British nationality, and partly of units drawn from Great Britain. It is ahundantly clear to us that it is impossible to transfer the control of Forces so composed to an Indian Minister. This is not due to the fact that the Minister would be an Indian, as is sometime: erroneously supposed, but to the well-established practice, which has never heer departed from in the history of the British Empire, that Imperial troops musnot be put at the disposal of Ministers not responsible to the British Parliament We desire, however, that the conversion of the Indian Army from a mixed force to an All-Indian Force should be pushed forward with the greatest possible energy, and we make proposals whereby an informed public opinion in the Legislature on Defence questions should be created. We consider that a definite time should be laid down in the Constitution, at the end of which the control of Defence should pass into the hands of responsible Ministers.

22. In our view, while it is necessary that there should he reserved powers in Read the hands of the Governor-General and the Provincial Governors, we would desire to see these much reduced in scope on those laid down in the White Paper. We consider that the success of the experiment of Indian Self-Government will be shown by the little use which is made of these powers It is necessary that the power of intervention should not be used so frequently as to lessen the sense of responsibility of the elected Memhers of the Legislatures and of the responsible Ministers. They should be essentially for use in emergency, and we believe that in future Governors and Governors-General will tend to rely more on their powers of persuasion and advice than on the putting into force of an actual exercise of their will.

dstration.

23. It has been said that Indian government is far more a matter of administration than politics. This may have been true in the past and even have many elements of truth to-day. There is no disguising the fact of the immense importance to India of a stable administration. There are in India millions of the population who are living in artificial conditions created and maintained by an efficient adminstrative machine. For example, the large agricultural populations in the canal colonies in the Punjab are dependent on a well-administered system of irrigation. It is true to say that the lives of millions depend on this machinery of government, and were it allowed to fall into disrepair the consequences would be far-reaching and disastrous. On the other hand, in our view, it is not possible for an administration, however able, disinterested and incorruptible, to function successfully against the force of public opinion. It is here, we consider, lies the fallacy of those who suggest that it is possible to return to the old condition of affairs in India, when the Members of the Civil Service were in fact the Government. Those days have passed, and we believe that the present generation of Civil Servants recognizes quite clearly the difference of function which they now have to perform, and that, instead of giving orders, they now have to persuade and advise. So long as the majority of the educated classes in India were not politically awake, and so long as those classes had not discovered the means of influencing the masses, it was possible to maintain that the best form of government for India was a disinterested bureaucracy. But as soon as the educated classes became politically awake and as soon as they began to manifest their power, as they have done in recent years, of swaying the masses, the administration had to work under conditions of opposition and criticism which must in time render all its efforts nugatory. We recognize, however, that there is still in India the need for British help in the services, and in this most of the spokesmen of India agreed, and we desire to see that those who serve India during the difficult transitional period through which she is passing should have that security and freedom from anxiety as to their status and prospects which will permit them to give the best services of which they are capable, and we are, therefore, in favour of all reasonable provision being made to this end. We deem it essential that strong and independent Civil Service Commissions should be set up at the Centre and in the Provinces, and welcome the White Paper proposals to this end.

Date of ration.

 We agree with the Indian Delegates in attaching great importance to the fixing in the Constitution Act of a definite date for the inauguration of the Federation. As they said in their Memorandum, "we have in view the psychological effect of such a provision on the political parties in India. The uncertainty that must necessarily result from the absence of any definite date in the Constitution Act for the inauguration of the Federation and the possibility of further delay arising from the procedure of an address in both Houses for the issue of a Proclamation would seriously prejudice the formation or realignment of political parties in India. On the other hand, we have reason to suppose that if a definite date were fixed, even the parties which are dissatisfied with the White Paper Constitution would probably cease to carry on an agitation on the present lines and would be encouraged to concentrate their attention on the new elections. We attach very great importance to this development, since the satisfactory working of the new scheme must necessarily depend on the existence of well-organized parties, prepared to work the scheme."1 We are entirely in agreement with this view, and for this reason we are unable to concur with the procedure outlined in the White Paper, whereby the inauguration of Federation will be dependent on an address in both Houses of Parliament. Nor can we accept the proposition that the coming into force of the new Constitution should be dependent on the Indian budgetary and financial position being entirely satisfactory. We can see no reasons why canons of finance, which are patently disregarded by all the leading countries of the

Joint Committee Records, No. 10, p. 37.

world including our own, should be imposed upon India. India indeed, has an erviable record in balancing its budget and meeting its financial obligations. It appears to us that masmuch as many event the Government of India must be carried on whether there is financial stringency or not, it is illogical to make self government depend on financial prosperity It is particularly undesirable that this should be done in the case of Great Britain and India proposal seems to us to regard Great Britain and India as creditor and debtor rather than as fellow-members of a commonwealth of nations Equally, we are unable to accept the view that the bringing into operation of the Federation should be dependent upon the adhesion of the Rulers of States representing not less than half the aggregate population of the States, entitled to not less than half the seats in the Federal Upper Chamber To agree to such a proposal is to subject the progress of Indian democracy to the veto of a number of auto-We consider that the Federation should be established, in the first place, with whatever States are prepared to enter it, and that other States, whenever their Rulers are prepared to accede, should be added. We should, of course, prefer to see the Federation fully representative of All-India from the start, but the entry of the States should not be made a condition of the establishment of responsible government at the Centre

25 We have been impressed by the great importance which all the Indian India and Representatives whom we have met lay on the subject of Status We do not Britain think that this is sufficiently recognized in the White Paper Proposals consider it would be well to mark the new departure by a change in the channel through which connection between Great Britain and India is maintained We should desire that India, on attaining Dominion Status, should come inder the Secretary of State for the Dominions, but during the transitional period we think that the India Office should be transformed into a Secretaryship of State for the Self Governing parts of the British Commonwealth of Nations in the East The Secretary of State should in our view be responsible not only for India, but also for Ceylon Burma, and any other portions of the British Commonwealth of Nations which are following the path towards complete In any event, it is clear to us that the India Office cannot self-government continue to exist on anything like the same lines that have obtained since the Crown took over the administration from the East India Company At the same time, it is desirable that the experience of the India Office should be fully utilized and we shall make certain suggestions for reform

26 In conclusion we would urge that in mangurating another stage in the conclusion. long history of the connection between this country and India we should, above all things, endeas our to exercise the utmost generosity We are convinced that the only real safeguard for British interests in India is the goodwill of the Indian people The insistence on a number of small provisions, each one of no very great value in itself, tends to spoil the effect of the great advance which has been made. We are profoundly convinced from our intercourse with Our fellow-citizens from India that generosity and fair dealing will create generosity and fair dealing, and that the spirit in which a gift is made is as important as the gift itself. We recognize that in India we are embarking on a great experiment The establishment of a form of government based on the ideals of Western democracy in an oriental country is almost unprecedented, To attempt to give a population of 350 millions a system of government whereby they will have control over their own affairs is almost unparalleled in political experience, but we are persuaded that the choice before us is either to go forward or to fail. It should be a matter or pride to us that we lave carried across the seas the principles of democratic self-government which we have so long practised, and that those seeds have borne fruit. The proposal to endow India with self-government is not, as some suggest, a falling away from the great traditions of the past, but is, on the contrary, the fulfilment of the work of all those great servants of India who have gone out from this country and who have laboured to make India a Nation

We have tried to meet, with a full sense of sympathy and responsibility, what we conceive to be the legitimate aspirations of the peoples of India. We believe that in the future as in the past men and women of our own race will be of service in helping India forward on the path of progress and that the bonds of friendship between the two peoples will in no way be weakened but rather strengthened by India becoming an equal partner in the British Commonwealth of Nations

It is our earnest hope that the peoples of India will seize their great opportunity of leading the East along the path of democratic progress and that all sections will unite in a common aim to make the new constitution productive of ordered freedom and social justice for all

### PART II

# PROVINCIAL AUTONOMY

27 We are in general agreement with the proposals of the White Paper for establishing Provincial Autonomy. It is our desire that in each Province a Government responsible to a Legislature should be set up which should have control over the entire Provincial field. We agree generally with the de-limitation proposed in the White Paper between the functions of the Provincial and the Federal Governments. The lists of subjects in Appendix VI seems to us to he sufficiently exhaustive and, with certain reservations in regard to Social and Labour Legislation, to give a satisfactory allocation.

# The Provinces

28 We are in agreement with the proposals in the White Paper to constitute two new Provinces-Sind and Orissa. We have carefully considered the objections that have been raised to the separation from Bombay of Sind, which have been mainly based on the possibility of there being a deficit in the Provincial Budget, and to the fact that the prosperity of the Province must depend to a large extent on the proper administration of the Sind Barrage We consider, however, that there is a very strong case that a territory, racially and geographically separated from the rest of the Presidency, should be green a separate administration. The Governor should be given a special responsibility in relation to the Sukkur Barrage We are also strongly in favour of the Constitution for the new Province of Orissa which will, we believe, do an act of justice to the claims of the Oriya-speaking people We think that the boundaries of the Province should be increased by the addition of the Jaipur Zemindari We have great sympathy with the desire of the Raja of Parlakimedi for the inclusion of his state in the new Province but in view of the racial and linguistic composition of the population therein contained, we are unable to recommend that his desires should be acceded to. We believe that even with the creation of these new Provinces there is a strong case for a reconsideration of Provincial boundaries, and we recommend that the Indian Legislature should as soon as possible after the coming into force of the new Constitution set up a Boundaries Commission to delimit the extent of the Provinces and to decide if some should, for greater facility in working be divided Generally speaking, we consider that the Provinces, however suitable as administrative units under an autocracy, are, in many cases, too large for the efficient working of democratic institutions for a people at the stage of development of that of many of the inhabitants of India, although, at the same time, we recognise that a Provincial patriotism has, in many instances, already been developed. It is therefore, in our view, essentially a matter which should be decided by the representatives of the Indian people We would add here a word as to the proposition which has been put before uon many occasions, namely, that no area which is not financially self-sufficient should be formed into a Province. We cannot accept this contention. It is a fact that the Indian Provinces and various parts of them differ widely in their financial resources, but we can see no reason why, two areas that admittedly differ in their racial and linguistic composition, should be united in order that one of them might bear the burden of the deficit in the other. In our view, the mere fact of contiguity to a deficit area does not make it equitable to impose a burden on the people of a particular Province. We recognize that it is desirable that no part of India should be semously retarded in its progress as compared with others by reason of its lack of resources, but we consider that the difficulty should be got over by the grant of funds from the whole of India, rather than that the burden of the deficit areas should be placed on particular Provinces for purely geographical reasons.

### The Provincial Executive

29 We are in general agreement with the White Paper in the proposals to abolish dyarchy and to transfer all subjects to Ministers We have considered with very great care the arguments which have been put forward in some quarters against the transfer of Law and Order or particular parts of that subject, notably the Police, but we think that the reasons given by the Indian Statutory Commission for the transfer are sound. It would be disastrous for British influence in India if, while all the more popular functions of government were transferred to Indian hands, the preservation of order should be retained by the Governor acting through an irresponsible Representative, whether British or Indian The success of a Police Force depends very largely on the extent to which it is recognized by the people as being maintained in their interests. It would be fatal to the efficiency of the force in the future if it were to be regarded as an instrument of an alien power It has been suggested to us that there should be some reservation in respect of the Special Branch of the Police, especially in Bengal The conditions in that Province, due to the activities of the terrorist movement, are altogether exceptional, and we recognize the serious nature of the problem. We think, however, that the evil must be dealt with by Indian statesmen, backed by the full force of public opinion which they should be able to rally to the support of their own government. It is not in our view possible to divide up the control of the Police Force for the Special Branch must depend largely on the co-operation of the members of the force engaged in their ordinary functions of preserving law and order. A doubt has been expressed whether information will be forthcoming as to terrorist activities if the Special Branch 18 under an Indian Minister, not because the witnesses who came before us had not confidence in the probity of Indian Ministers, but because the informants might suspect that their names might be disclosed. We are, however, satisfied that Indian Ministers will follow the usual practice which obtains in this country and will not seek for information from the Chief of Police as to the names of those on whose information action is taken. We have already stated that we desire to give in the Provincial field the fullest opportunity for the experiment of parliamentary government on the British model We consider, therefore, that all Ministers should be elected members of the Legislature, and there should be no power in the Governor to appoint as Minister a non-elected person. It has been argued that it might be advisable at some time and in some Provinces for the Governor to have the power of entrusting a particular portfolio to someone who did not owe his position to popular election, and the suggestion has been made that the provision of Second Chambers in some of the Provinces will enable this to be done on lines not unlike those which obtain in this country where some Vinisters are Members of the House of Lords We do not consider that this provision should be included in the Constitution It is undesirable, we think, that there should be any blurring of responsibility, which must be definitely either with Ministers responsible to the Legislature or with the Governor if a complete breakdown occurs,

### Selection of Ministers

30 We consider that the Governor in selecting Ministers should follow the practice that obtains in this country, that is to say, that he should send for the individual who, in his opinion, commands the greatest amount of support in the Legislature, and should invite him to form a ministry consider that the practice already obtaining in Madras of having a First Minister who is, in fact, the Prime Minister should be followed in all provinces The White Paper suggests that the Governor should be instructed to choose his Ministry in such a way as to represent the various communities. We do not think that his discretion should be in any way hampered. If real parliamentary government is to be established, it is essential that there should be collective responsibility At the present time in some Provinces in India the Ministry is composed of Members who draw then support from separate sections and who cannot rely on a majority in the Legislature to support the Ministry as a whole While in some Provinces such a practice may still be necessary, we consider that experience has shown that a system of groups forms a very weak basis for a government, and we should desire that the Governor, wherever possible, should endeavour to form a homogeneous Ministry

The Governor's special responsibilities

31 It is proposed in the White Paper that the Governor shall have a special responsibility in respect of (a) the prevention of any grave menace to the peace or tranquility of the Province or any part thereof, (b) the safeguarding of the legitimate interests of minorities, (c) the securing to the members of the Public Services of any rights provided for them by the Constitution and the safeguarding of their legitimate interests, (d) the prevention of commercial discrimination, (e) the protection of the rights of any Indian State, (f) the administration of areas declared, in accordance with provisions in that behalf, to be partially excluded areas, and (g) securing the execution of orders lawfully issued by the Governor-General. The Governors of the North-West Frontier Province and of Sind are respectively declared to have in addition a special responsibility in respect of (h) any matter affecting the Governor's responsibilities as Agent to the Governor-General in the Tribal and other Trans-border Areas, and (s) the administration of the Sukkur Barrage With regard to (a) the Joint Memorandum of the British India Delegation urges a double limitation on the scope of this special responsibility first, that the special responsibility itself shall be restricted to cases in which the menace arises from subversive movements or the activities of a person or persons tending to crimes of violence, and, secondly, any action taken by the Governor under it shall be confined to the department of Law and Order 1 We accept the first suggestion We feel that the special responsibilities of the Governor should be reduced to the absolute minimum necessary, and that the provision in the White Paper is drawn in such wide terms as to enable the Governor to step in and overrule Ministers over a very wide To give such wide powers of intervention is, in our view, likely to reduce that sense of responsibility which we wish to see created in Ministers and Legislatures We believe that the success of the Provincial Governments will be shown just in so far as such a power does not have to be exercised, and we consider that powers given to the Governor must be adequate, but in our view they should essentially be emergency powers to be used only where a breakdown threatens and not to be part of the ordinary operation of govern-We do not agree, however, that any action taken by the Governor should be confined to the department of Law and Order This is to fall into the mistake, which may perhaps have arisen owing to the operation of dyarchy, in imagining that Government can be divided up into a series of watertight compartments With regard to (b), we agree with the British India Delegation in thinking that the term "legitimate interests of minori ties" is capable of a dangerously wide interpretation. It may be said that

<sup>&</sup>lt;sup>1</sup> Joint Committee Records No 10, p 51

the term "minorities" has a special meaning in India and connotes the Minority Communities such as the Muslims, the Sikhs, or Indian Christians, and that the Governor will well understand the scope of the phrase. We fear, however, that it may be possible for some Governor in the future so to interpret the "legitimate interests of minorities" as to make him feel it incumbent upon him to prevent legislation directed to the removal of economic, social and religious abuses, and we should therefore propose that, instead, the words "racial and religious" should he inserted before the word "minorities". We also agree that the words in (c) are capable of a wide interpretation, and would prefer that "special responsibility" should relate only to the securing to the Memhers of the Public Services of the rights definitely provided for them by the Constitution

### Procedure

32 It is contemplated that the Governor should normally preside at meetings of his Ministers We realize that for some time this practice may be desirable, but we would wish that it may soon fall into desuetude early stages of the new Constitution, Ministers will value the advice of the Governor, but this can be obtained without his direct participation in what amount to meetings of a Cabinet It is, we think, in the direction of gradually transforming the position of the Provincial Governors into that held by the Governor of a self governing Dominion that progress towards full self-government will be made in the Provinces This progress may well be more rapid in some provinces than in others hut, in our view, it is desirable from the start that Ministers should take upon themselves the full responsibility. We recognize that it is necessary that the Governor should be kept fully informed of all that is taking place, if he is to be in a position to carry out his special responsibilities We believe that this can be fully provided for by his right to lay down rules of business We consider it necessary that the Governor should be provided with an adequate staff and that the salaries of the Governor and of his staff should be not votable. In particular, it is necessary that he should have a capable and experienced officer of high standing at the head of his staft who would be fully conversant with the current affairs of the Province and in close contact with the administration. It is, in our view obviously necessary, in the case of Provinces to which Governors are sent out from this country, that there should be available a fully-informed officer of high rank if a Governor is to carry out his onerous and responsible duties

### Special Powers

33 We agree with the White Paper, that it is necessary that there should be special powers in the Governor to legislate in case of emergency, but only in emergency We disagree with the White Paper in the suggestion that where a Governor proposes to pass emergency legislation he should seek the consent of the Legislature It should be a condition precedent to the introduction of such legislation that it is impossible to get the necessary consent of the Legislature and for the Governor to endeavour to obtain that consent which ex-hypothess will not be forthcoming seems to us to be quite illogical We consider that all acts of Governors and all temporary ordinances should be laid before Parliament and that the Governor, before legislating or passing ordinances, should have the consent of the Governor-General We are in ordinances, should have the consent of the Governor-General agreement with the recommendation of the White Paper, that in the event of a hreakdown of the Constitution the Governor should have power, by Proclamation, to assume to himself such powers vested in any Provincial authority as appear to him to be necessary for the purpose of securing that the Government of the Province should be carried on effectively Events have shown that this may be necessary and we realize that in any event the Government must be carried on We desire that there should be the sharpest distinction between ordinary constitutional government and the emergency action of a Governor in the event of a breakdown It is far better, in our view, to make no pretence of carrying on constitutional government where, for the time being, this has failed.

# Provincial Legislature

34 The White Paper pioposes that in each Governor's Province ' there will be a Provincial Legislature, consisting, except in the Provinces of Bengal, the United Provinces and Bihar, of the King, represented by the Governor, and of one Chamber, to be known as the Legislative Assembly In the Provinces just named the Legislature will consist of His Majesty, represented by the Governor, and of two Chambers, to be known respectively as the Legislative Council and the Legislative Assembly ' It is also proposed that after a period of ten years "after the commencement of the Constitution Act-(a) where the Legislature consists of two Chambers to provide by Act, which both Chambers esparately have passed, and have confirmed by a subsequent Act passed not less than two years later, that it shall consist of one Chamber instead of two Chambers, and (b) where the Legislature consists of one Chamber, to present an Address to His Majesty praying that the Legislature may be reconstituted with two Chambers." In our view, Second Chambers, as proposed in the White Paper and composed largely of landowners and reactionary elements opposed in general to the wishes of the mass of the people, are undemocratic We are in favour of one Chamber only We should like. on this subject, to quote with approval the opinion of some Members of the Indian Statutory Commission

"It has generally been proposed in evidence before the Joint Conference to constitute Second Chambers disproportionately representative of vested interests. They fear that euch Chambers would be regarded es an undemocratic instrument of Government, and that ceaseless conflict between the two Houses would result. They think that this danger will be a real one, however the Second Chambers may be formed. Whilst a Second Chamber will not be a substitute for the Governor's powers, its existence may be used as an argument for modifying the Governor's powers before this is desirable, and it may support the Lower House against the Governor and so increase rather than prevent friction between him and the Legislature. So long as Ministers are secured in the support of the Lower House, and so obtain the funds which they require, the Second Chamber can exercise little control on the administrative side, and it is here that the influence of a Legislature is most required."

In the Joint Memorandum eubmitted to us by the British India Delegation they pointed out that only one of their number was in favour of Second Chambers in the three Provinces of Bengal, Bihar, and the United Provinces, while another Member of the Delegation considered that only in the case of the United Provinces was a Second Chamber necessary. All the others were totally opposed to the creation of Second Chambers in Bengal, Bihar, and the United Provinces. There are two other arguments against Second Chambers which must be given due weight. The first is the additional cost on Indian revenues, which would be considerable and out of all proportion to the benefit, if any, to be gained, and the second is the drain on the personnel of the Province which would be made by creating so large a number of seats which must be filled

### Composition of the Legislatures

35 We have found ourselves obliged to accept the existing position in India and to agree reluctantly to the continuation of Communal Electorates, and we, therefore, accept the allocation of seats in the White Paper which are based upon the Communal Award issued by His Majesty's Government on August 4th, 1932, with such modifications as have been rendered necessary by the proposal to create a new Province of Orissa, and by the Poona Pact of September 25th, 1932. We have had a considerable amount of criticism of the Poona Pact by representatives from Bengal on the ground that undue representation is given to the Depressed Classes. In our view, the social and economic position of the Depressed Classes renders it most desirable that

Indian Statutory Committee Report, Vol. II, p. 99
 Joint Select Committee Records, No. 10, p. 52

they should be given the fullest representation possible, and we consider that the Communal Award, having heen made and the Poona Pact having been accepted by representative Indians, it is not desirable at the present time to depart from either of them. We accept the numbers suggested in the White Paper for the Provincial Legislatures, subject to the following alterations We can see no reason for the provision for special seats for In the Report of the Indian Statutory Commission, Volume II, Part II, Chapter 2, Section 90, the question of the special representation of landholders was exhaustively reviewed. They came to the conclusion that the landholding interests have in fact at the present time been returned for four times as many seats as were specially reserved for them, and considered that the special protection furnished to them at the present time could be safely withdrawn. We are entirely in agreement with this view. If special representation were needed it should be given not to those who by leason of their wealth and status in the community command influence and power, hut to those who by reason of their poverty and low status are likely to find We are also opposed to special representation of then claims overlooked We know that the Indian Statutory Commission agreed that universities university seats should be preserved, but with considerable hesitation From our own experience we find that university seats do not provide a special class of representative differing in any essential from those who find their way into legislative assemblies through general constituencies, and we, therefore, propose that these special seats should be abolished. With regard to the representation of Commerce and Industry and Planting Interests, here, again, we consider that the wealth and influence of these classes will always be sufficient to obtain for them adequate representation in the legislatures In the case of Luropeans, where admittedly there may be little likelihood of their being elected from general constituencies, we recognize that, in view of the long connection of the British people with India and the special interests of Europeans, that there should be special representation for them believe, also, that the presence of Europeans in the Legislative Assemblies has been welcome to their Indian colleagues as bringing in an experience which has been found very valuable We think that the representation given to Europeans should be frankly given to them as such and they should not be returned as representatives of Industry and Commerce The abolition of these special seats will provide for an increase in the number to be allotted to the territorial constituencies and thus allow of some reduction in their This should, of course, be done with due regard to area and population preserving the communal proportions.

36 We consider also that there should be an increase in the number of Increased seats reserved for Labour It might be contended that having rejected the Repreclasms of the landholding and capitalist classes to special representation, we sentation. are not equitable in retaining special seats for Labour The answer is the same as that applicable to the case of the depressed classes. It is necessary to give special protection to those whose economic circumstances render them liable to exploitation

The Indian Franchise Committee in its report stressed the importance of adequate representation of Labour in the legislatures, pointing out that "the force of Labour is in its numbers," and that "until a further lowering of the franchise secures it more wholly adequate representation in the electoral roll" special representation is necessary, and it quotes with approval the views expressed by the Royal Commission on Indian Lahour ' if special electorates are to remain a feature of the Indian Constitution, there is hardly any class with so strong a claim to representation by this method as industrial labour," and further If special constituencies are retained it should be recognised that Inabour has not less claim to representation than employers "1" With these views we are in full accord.

<sup>&</sup>lt;sup>1</sup> Indian Franchise Committee Report, Vol. I, p. 3, and pp. 97 98

The Indian Franchise Committee recommended that 38 seats should be given to Labour in the Provincial Legislative Councils as against 46 seats allocated to Commerce and Industry. The White Paper has increased this disparity by adding yet another 10 to the latter Vested interests are also reinforced in the White Paper proposals by the votes given to the landlords. The Indian Franchise Committee further pointed out that the administration of lahour legislation must for the most part be in the hands of the provinces and we regard it as essential that the Provincial Legislatures should contain representatives of Labour who can watch over the provincial administration and can represent the legitimate desires and gnevances of the industrial labouring class "

We therefore consider the representation given in the White Paper as quite We support the proposal of the Indian National Trade Union madequate Conference that Labour should be given at least 10 per cent of the total

number of seats

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37 We should prefer that as far as possible Labour Representation should be obtained by establishing adult suffrage in the industrial and planting and the large cities We consider that the more developed administration in those areas would be able to cope with increased electorate, while there is no reason why the franchise level should be the same in all constituencies. In our own country there was for many years a great diversity of franchise as between urhan and rural areas

We especially desire this method because it is in our view far better that the needs of the wage earners should be brought home to the candidates of all classes who would be affected by the existence of a labour vote than that labour representatives should be returned by constituencies of electors segregated from the rest of the community

We recognize, however, that this method is at present only of limited application, and that pending the introduction of adult suffrage generally it

is necessary to provide for special constituencies

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- 38 Accordingly we concur with the Indian Franchise Committee's proposals for Trade Union Constituencies as a temporary measure The recommendation was to form these constituencies in the following manner
  - (a) To qualify as an electoral unit for the purpose of voting for a special Trade Union Constituency a Union should have been registered for a minimum period of one year (in the case of the first election under the new Constitution six months)

(b) Direct voting where the trade union is confined to one area

(c) Where the Trade Union covers two or more centres, election to the seat or seats allotted to the trade unions in the particular province through an electoral college composed of delegates in each union in the proportion of one for every group of one hundred voters

(d) In the varying circumstances of individual provinces seats might. if conditions make it feasible and desirable, be allotted from among the trade union seats to be filled by representatives of trade unions of

special importance or of specially large membership

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39 The suggested qualifications of electors to trade union constituencies should be

(a) Minimum age of 21 years

(b) Paid up membership for at least six months of a registered trade union, which has itself been in existence for twelve months (in the first election under the new Constitution membership three months. registration of union six months)

They also suggest that a candidate for a trade union constituency should be either a member, or an honorary member, or an official as defined in the Trade Unions Act, of one of the trade unions concerned, his position in any

of these capacities to be not less than one year's standing

- 40. We are bound to accept the evidence which has been brought before Frenchise, us that at the present time administrative reasons forbid the introduction of adult franchise generally. We, therefore, accept the proposals in the White Paper, subject to what has been stated above with regard to labour representation, with regard to the franchise for male voters. We consider that the constitution should provide definitely for the introduction of adult franchise in the provinces. Power should be given to any Provincial Legislature to widen, but not to narrow the franchise. It should be provided that adult franchise should be in force in all provinces at the general election next following the expiry of ten years from the date of the inauguration of the new provincial constitution.
- 41. With regard to women, we consider that the White Paper proposals Women's will not bring into the electorate nearly as many women as is desirable. We Franchise entirely agree with the views of the Indian Statutory Commission when they say: "The women's movement in India holds the key of progress, and the results it may achieve are incalculably great. It is not too much to say that India cannot reach the position to which it aspires in the world until its women play their due part as educated citizens" We are well aware of the formidable obstacles which every reformer in this field will encounter, for the position of women in India is bound up with the religious views of the great communities The development of social consciousness among the women of India is phenomenal, and as far as we can ascertain has not been equalled by any other women's political movement in any other part of the world. The development is the more remarkable considering the impediments which such a movement has had to encounter. Nothing could be more disastrous at this juncture than to create the impression among the women of India that the proposed new Constitution treated of persons of less equal citizenship. We therefore recommend the following modifications in the White Paper proposals for women's franchise: (1) That the application requirements should be dispensed with altogether; (2) That a literacy qualification should be substituted for the educational standard qualification; and (3) That the wives, pensioned widows, and mothers of Indian officers, non-commissioned officers and soldiers should be enfranchised; (4) That the wife of a man who is qualified as an elector under the new Constitution shall be entitled to a vote. We are aware that this will mean a big addition to the electorate, but we are persuaded that it would be unfortunate if a big addition to the male electorate were made now without a corresponding increase in the women's vote. Delay now would only mean an increase later, which would have an unsettling effect on the political situation in the provinces.

# PART III FEDERATION

42. We are in agreement with the proposal in the White Paper to transform A Federal Union of India into a Federation of the Butush India Provinces and the Indian States and States. This as the next stage in the evolution of the Indian polity was Provinces. suggested in the Montagu-Chelmsford Report and formed the basis of the whole proposals of the Indian Statutory Commission. At the time when the Indian Statutory Commission reported it was quite uncertain as to whether or not the rulers of the Indian States would be prepared to enter a Federation, but thus has since been placed beyond all reasonable doubt by the declarations of Indian rulers. They have, however, significantly declared that they would only be prepared to enter a Federation, the Government of which was responsible. The Indian Statutory Commission pointed out that the formation of a Federation entailed a double process: that of the creation of autonomous Provinces and their reintegration in a Federation. We have no doubt that the double process must be embodied in the same Statute

and that the time lag which may be necessary between the establishment of Provincial autonomy and the creation of the Federation should he no longer than that which is absolutely dictated by administrative necessity. We have already set out our views as to the Constitution in the self-governing Provinces. It remains then to consider on what terms the rulers of the Indian States should enter the Federation.

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43. The White Paper proposes that a Ruler of a State shall signify to the Crown his willingness to accede to the Federation by executing an Instrument of Accession, and this Instrument will, we assume, enable the powers and jurisdiction of the Ruler, in respect of those matters which he had agreed to recognise as Federal Subjects, to be exercised by the Federal authorities hrought into existence by the Constitution Act. Outside these limits the autonomy of the States and their relations with the Crown will not be affected in any way by the Constitution Act. We accept generally the list of Federal Subjects given in the White Paper. We consider that it is desirable that the Instrument of Accession should in all cases be in the same form and should, as far as possible, include a similar list of subjects. We recognize that there may be some exceptions due to Treaty rights and special privileges, but we consider that there must be a definite minimum laid down and that as far as possible all States should come in on the same terms.

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44. The White Paper suggests that a Federation which comprised the Provinces and only a small number of the States would hardly be deserving of the name. We are unable to agree. We consider that the forces making for Federation are so strong that it is certain that before long a majority of the States, in numbers and population, will accede. At the same time, it is possible that there might be some besitation at the beginning and we see no reason wby the rest of India should wait for a certain number of Rulers of States to change their opinions before enjoying responsibility at the Centre. We would prefer that the Federation should start with a very large proportion of the Indian States included in it, but we believe that in any event a start should be made and that it should be possible to build up a Federation by a gradual accretion of States. It is for this reason, among others, that we desire that the conditions of accession should be uniform, and also, as we shall indicate later, that there should be a definite basis of representation for States adhering.

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45. We agree with the proposal in the White Paper, that there must be a legal differentiation of functions between the Representative of the Crown in his capacity as Governor-General of the Federation and as representing the Sovereign in his relationship with the States not adhering to the Federation and to all States in respect of the rights of the Crown outside the sphere of the Federation. We consider that it would be convenient if in his first capacity the King's representative were styled Governor-General and in his second Viceroy.

- 46. We agree with the proposals of the White Paper, that the area of the Federation should include the whole of British India, with the exception of Aden and Burma. We give helow our reasons for holding that Aden should henceforth cease to be part of British India. As regards the States which have acceded to the Federation, the Federal jurisdiction will extend to them only in respect of those matters which the Ruler of the State has agreed in his Instrument of Accession to accept as Federal. We consider that the geographical remoteness of Aden from India and the difficulties of merging it satisfactorily in a new Indian Federation make its separation desirable. Further, it owes its importance essentially to its position as a strategic point on the road to the East In our view places such as Aden concern the whole Empire and should not be considered the exclusive responsibility of any particular member.
- 47. We give reasons later for our view that it is desirable that Burma should be separated from India.

### PART IV

### RESPONSIBILITY AT THE CENTRE

48 We agree that of all proposals in the White Paper the one which has given rise to most controversy is that of giving responsibility at the Centre We have already given reasons why we consider that this is essential, both as a fulfilment of the pledges of this country to India, and as a condition precedent to the active co-operation of the Indian people in the new Constitution. This, we believe, applies no less to the Rulers of the States than it does to the representative statesmen and people of British India. We feel, however, the necessity of widening the proposals of the White Paper and providing a measure of elasticity so as to give Indians more and more real responsibility for the government of their country. We would here quote from the evidence given to us by Sir Charles Innes, who as a Member of the Indian Civil Service has spent the best part of a life-time in India, in some of the most important

Government positions He gave it as his view that -

'Incomplete self government is the most difficult form of government, it is always, so to speak, reaching ont to fulfil itself Canada in the first half of the 19th century offers in some respects a parallel with the India of to-day There was an irresponsible executive confronted by a powerful legislature, and Canada had its own communal problem in the rivalry of the French and English Canadians The effects of these factors were much the same as have manifested themselves in recent years in India There was a tendency towards irresponsibility on the part of the legislature The tension between the French and English Canadians increased and there was growing bitterness against the Home Government Finally, there was a rebellion, and it was only Lord Durham's report that saved Canada for the Empire He recognized that responsibility was the only real remedy for the situation that had arisen History is repeating itself in India to-day, and much the same phenomena can be seen The ferment has been immensely increased by the first instalment of self-government We have set every person in India who understands the matter at all thinking about political advance. It has become an obsession with almost all educated Indians, and they feel that the honour and self respect of India are bound up with it As the Indian Statutory Commission put it, there has grown up 'a passionate determination among the politically-minded classes of all Indian races and religions to assert and uphold the claim of India as a whole to its due place in the world,' and there is in India to-day a real Nationalist movement con centrating in itself all the forces which are 'roused up by an appeal to national dignity and national self-consciousness' Again, communal feeling between Hindu and Muslim is more acute to-day than it has ever been before, and finally during the last twelve years racial feeling against the British has increased in India Politically-minded Indians tend to believe that the British are standing in the way of their legitimate. aspirations and that we do so because in our own interests we are reluctant to give up our hold on India 1

May take many forms We believe that any attempt to try to create responsibility at the Centre by an exact reproduction of the machinery which functions at Westminster would be doomed to failure. In the first place, the system of responsible government as we know it in this country depends on stable divisions on Party lines and, generally speaking, functions satisfactorily where there are only two main Parties. These Parties should not be the creation of groups formed by Members of the Legislature subsequent to their election but should represent real divisions of opinion which extend back to the constituencies. In the Federal Legislature, apart from the communal cleavages

<sup>1</sup> Jo nt Committee Minutes of Evidence, 1. 550

which already make the working of the British system difficult in mahy Provinces, there is to be a sharp division of the Legislature into two categories of members, one of elected representatives from British India, the other of nominees of the Rulers of States It seems difficult, therefore, to envisage the emergence of Parties on the lines familiar to us in this country Two further obstacles present themselves. The first is that owing to the nature of the Federation, the Members of the Legislature will not be equally concerned in its territory and that the jurisdiction of the Federation will not extend as to all subjects equally over that territory, while the other is that the subject. matter of Central administration and legislation provides a rather slender basis for a full parliamentary system We realise that 90 per cent of every. thing that concerns the ordinary citizen comes within the ambit of the Provincial administration For these reasons we consider that respons bility at the Centre will be developed on lines very different from those obtaining at Westminster We think that it is not always realised in India that the British Cabinet is in fact the master of the Legislature This is a result of the Party system, for the Cahmet though formally selected by the Crown, is really composed of the leading members of the Party in a majority maintains its power largely through the discipline of the Party machine, backed by the power of dissolution. We think that this power of the Ministry to control the Legislature will not be reproduced at Delhi, indeed we think that the Muustry will be far more the servant of the Legislature than its master Under these circumstances we think that real responsibility will be rather with the Members of the Legislature than with the Ministers that is to say that the Members of the Legislature will have to take full responsibility for their actions We do not think that the practice, whereby a Ministry is dependent from day to day on a vote of the Legislature during a Session, is workable in India. We suggest proposals which will give what is essential—greater stability to the administration

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to special responsibilities. We consider that the White Paper proposals in regard to the Governor-General are open to the same objection as those suggested in the case of the Provincial Governors and we make the same recommendations for modification. In addition we do not think it necessally that the Governor-General should have a special responsibility for sale guarding the financial stebility and credit of the Federation. It is in our new, useless to give power and responsibility on the one hand and take it away with the other. If Indian representatives are not capable of conducting on sound lines the finances of the Federation, they are not capable of self-government.

escaved opertments 51 We see no reason why the Indian Federation should not have control over the Department of Foreign Affairs We recognise that the Viceros in his relations with those Indian States which do not join the Federation and in relation to all the States in regard to those subjects which are outside the Federation, will continue to control the Department which in the Government of India has been bitherto described as foreign, but we consider that in its relationship to the rest of the world India is entitled to have the same control over her foreign policy as that which is conceded to the other Dominions may be suggested that masminch as Indian Defence is to be a Reserved Subject Foreign Affairs should also be reserved but in our view this is to turn the argument inside out Arm ments depend on foreign policy India has tor years paid for her own defence, although the foreign policy of the British Commonwealth of Nations, of which the is a member, has been decided without her baving an effective voice Wc would point out that at the Peace Conferences and subsequently in the League of Nations India has had representation as a nation. We consider that this recognition which was given to her as a consequence of the services of her sons in the Great War should be given a full content by conceding to ber the same degree of control over her external relations as is enjoyed by ber sister States in the British Commonwealth

52 It seems to us a mistake to have a special reserved Department of the Government of India to look after the religious ministrations of the Army Such ministrations in our opinion, should form part and Services in India of the organization of the Army and the Services Whether it is wise to make such ministrations a drain on the revenues of a people of other religions is, we think, a point that has not beretofore been sufficiently considered. The Secretary of State for India, in reply to the Archbishop of Canterbury on the

question of reserving Ecclesiastical Affairs, said

"(Arcbbishop of Canterbury) Will you be so good as to denne as far as you can the exact range and scope of what is called Ecclesiastical Affairs as a Reserved Department? (Secretary of State) intend to mean by the reservation of the Ecclesiastical Department is the reservation of the existing department, namely, the adequate provision of religious ministrations for the Army and the Services We do not contemplate any further extensions of the Ecclesiastical Department. That, speaking generally, is the kind of department that we have in (Archbishop of Canterbury) So that in point of fact, though for good reasons a Reserved Department, it is a very small matter affects only religious provision practically to the troops, the Services, and in a few cases Europeans in certain places? (Secretary of State) Indeed, it is of such definitely limited scope that I have often wondered whether it is necessary to exclude it by name at all-whether it did not really come by implication within the field of the Services and the field of defence, but upon the whole I am convinced that it is better to make an exclusion nominatim; but it is exactly the kind of department that we have in mind (Mr Morgan Jones) May I ask whether it does in point of fact involve any ecclesiastical services for civilians who have no relation at all to the Services? (Secretary of State) It is difficult for me off-hand to give an answer to that question I will look into it (Mr Morgan Jones) I will ask it when my turn comes (Secretary of State) Generally speaking, subject to a few quite minor exceptions, the answer is that it is intended that this Department should be a Department for the Services and for the Army"

While we are prepared to accept the proposition that so long as we have an Army in India their spiritual needs should be provided for, we cannot see why this can only or best be achieved by the proposal of the White Paper to retain the Ecclesiastical Department permanently as a special Reserved Department of the Government of India We think it would be very much better to abolish this Department and include religious ministrations as an integral part of the Army administration We would go further and propose that so long as we have an Army and Services in India whose spiritual needs are entirely different from those of the people, amongst whom they serve, it would be a gracious act on our part if the necessary expenses were placed on British instead of on Indian revenues We are in any event entirely opposed to this being included as a Reserved Department of the Government of India.

53 We agree that Defence must for some years be a Reserved Department, peimes. and we accept, therefore, the proposal that the Governor-General should exercise his functions through a Counsellor We consider that this Counsellor should form part of a unified Ministry We recognize the serious constitutional assue raised by the existence of the Indian Defence Problem and the way in which it is met at the present time by the Army in India So long as British troops are employed in India, whether for external defence or for internal security, it is, in our view, impossible to bring them under the orders of a responsible Minister The Indian Statutory Commission examined the whole constitutional position created by the existence of the Indian Army at great

length, and they recognized that it was a formidable obstacle to the development of complete self-government. We believe that Indian public opinion is extremely sensitive on this point, but that the majority of the leading statesmen recognize the hard facts of the situation. At the same time, we believe that it is essential that the Constitution should contain provisions for the bringing to an end of an anomalous position. We consider that there should be a definite programme of Indianization with a time-limit of thirty years. It may be urged that it is impossible to lay down an exact period within which an Indianized Army would be capable of the defence of India. There may be truth in this, but we consider that it is necessary, if the work of Indianization is to be pushed forward with the greatest possible energy, that there should be a clearly marked time by which the goal is to be attained. From a study of such reports and documents that bave been available to us, we believe that this could be successfully accomplished in a period of twenty-five years. We suggest that that period should be aimed at, but that a maximum of thirty years should be fixed which must not be exceeded.

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At the same time, we are impressed with the very large proportion of her revenues which India spends on Defence. We do not suggest that this is in excess of the amount needed to maintain sufficient forces for the requirements of India, and we are aware that a recent agreement on the subject of the capitation payments has resulted in an advantage of a million pounds a year in India's favour, but we consider that, as compared with other parts of the Empire outside the United Kingdom, India has for years borne, and is still bearing, an undue expense. It may be urged that India's defence by sea is provided by Great Britain, but her danger from the sea is a potential rather than an actual menace. India possesses in the North-West Frontier the one land frontier in the whole of the British Commonwealth which not only borders on areas which are frequently liable to be disturbed, but is exposed to the possibility of invasion by a hostile power. While we recognize the vital necessity of the safe-keeping of this frontier in the interests of India herself, we cannot but recognize that the menace to that barrier may well result, not from anything which India berself does, but from the mere fact of her being a Member of the British Commonwealth. We therefore consider that the whole question of Imperial Defence and the responsibilities of the various Members of the British Commonwealth should be reviewed at an early date in order that it may be considered as to bow far the burden now borne by India is equitable. While we sures that Defence must continue to be a reserved subject, we are strongly impressed with the need for building up an informed opinion on Defence matters, and we therefore propose that there should be a Standing Defence Committee of the Legislature.

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54. The Federal Executive should, in our view, consist of the Governor-General, the Counsellor in charge of Defence, and Ministers, the number of which we think it undesirable to specify. We consider that when the Legislature has been constituted of Members from the States and Provinces the Governor-General should consult with leading members in order to find out what combination of persons would be likely to command the confidence of the Legislature. He should then submit these Ministers and the Counsellof in charge of Defence as a Ministry to the Legislature for a Vote of Confidence. This Vote should signify the acceptance by the Legislature of the Ministry, and thereafter the Ministry should remain in office for a definite term during which period it could only be removed by a definite vote of No Confidence carried by a two-thirds majority. We conceive of the position of the Ministry as something like that of the Swiss Executive. Formal joint responsibility would not be explicitly laid down, as, indeed, it is not in most constitutions, but the acts of the Government would be the acts of all, and although the Ministry would be composed of heterogeneous elements it would be subject to the very powerful influences which tend to bring solidarity to a body of men in positions of responsibility. We consider that in the early stages of the new Constitution the Governor-General will preside at meetings of his cabinet and that only at a later stage will this practice fall into desuctude. There should, however, be a first Minister, who will preside in the absence of the Governor-General and lead in the Legislature. He should bold a portfolio without too heavy an administrative content. For the working of the Legislative machine we suggest the setting up of a number of standing committees, some of which Defence, Finance, Foreign Affairs, should be statutory. These committees should correspond with the functions of the Central Government. They would meet from time to time during the Session. The Minister should preside, while in the case of the Defence, the official Member would do so. We conceive of these committees working somewhat on the lines of those in municipal or in the Ceylon Constitution. The object should be to bring the members of the Legislature into real contact with administration. We think that the Committee stage of a Bill should, wherever possible, be remitted to the standing committee dealing with the particular function of government concerned. We think that in this way, through a developed committee system, much of the difficulty which has been brought to our notice of State Members voting on purely British India questions will be avoided. It would be natural to remit Bills dealing solely with British India to committees of members drawn only from British India. The Defence Committee would have less control than other committees, such as those dealing with finance and foreign affairs, but would, we think, form a valuable field of experience for members. We consider that at all these committees it should be the usual practice for officials to be present, not for influencing policy, but for providing information. In our view, owing to the subject-matter which would be dealt with at the Centre and to the position of the Federation, it is unlikely that governments will be formed with definite legislative programmes, as in this country. We think that much legislation will come forward in the way of private members' Bills. We have made this general sketch of the way in which we might expect responsibility to be exercised at the Centre, because it is important to realize that the British system is not the only system and that it is itself susceptible of reform in some directions. It is a question as to what provisions can be included in the Constitution Act itself. We would rather leave the development of the Constitution at the Centre to the elected Members to work out the forms and methods which seem appropriate. We attach importance, bowever, to the provision which will give to the Ministry some degree of stability, for we have seen in many countries, where there has been no stable Party system in Legislatures, but only a number of groups. the danger and weakness entailed by constant changes of Ministry; and we should desire that at the Centre, from the start, it should not be assumed that because the Legislature takes a different view from the Ministry on a particular point that therefore the Minister should resign. We consider that changes of Ministry should only take place as the result of a direct Vote of No Confidence.

55. We have found the greatest difficulty in deciding the question of the The Pederal method of election to the Central Legislature. It should be recognized that legislature. to attempt to provide a legislative body which shall be representative of a population of over 350 millions is without precedent. We are met at the outset by the difficulty of applying the representative system to a unit of such magnitude. We are reluctant to establish at the Centre a very large body, because we do not think that the subject-matter which will be dealt with there will give sufficient occupation to the Members, while the larger the body, the more difficult is effective working. On the other hand, a small Legislature means very large constituencies in which the problem of widening the franchise may present some formidable difficulties. Our objection to Second Chambers in the Provinces applies also to the Centre; indeed, it is strengthened. As we understand the proposals of the White Paper, it is suggested that there should be two Chambers of equal power and of very similar composition, and that in the event of differences between the two Houses, the device of a Joint Session

should be employed We consider that, in effect, this really makes the Central Legislature a single Chamber, meeting for certain purposes in two sections, and makes an unnecessary duplication of representation, which results in an unwieldly body of legislatures. We, therefore, propose that there should be only one Chamber at the Centre, and we accept the proportions laid down for representation from the Provinces and the States as apply to a single chamber.

States The proposal submitted is to allocate seats to both Houses, and seems to combine the criteria of status and population. We consider that the introduction of status unnecessarily complicates the question, and we would desire to see laid down a definite population basis for representation, though we recognize that it may be difficult to obtain consent to this simplification. In any event, we think that there should be a definite formula which could be applied to every State, so that if, as may well be, the Federation is built up by the gradual accession of States, there may be at band the means of allocating forthwith the representation to which any particular State is entitled. We are opposed to the proposal in the White Paper that any weightage should be given to the States' Representatives if the full number of States has not joined the Federation. We think that by allowing only such representation to the States side as is proportionate to the number and population of the States acceding there will be an incentive on the part of those in the Federation to work for the inclusion of others.

57 We have examined the proportion of members allocated to the various Provinces, and while we recognize that a smaller Province must have some addition to its population ratio, we are unable to accept the differentiation made in favour of Bombay and the Punjab at the expense of Madras, Bengal and the United Provinces We see no reason why Bombay should be allocated almost two members per milion while Madras and Bengal get less than one, We consider that all Provinces, with the exceptions mentioned above, should come in on an equal basis. We have considered very carefully the rival claums of direct and indirect election. On the one hand, direct election is favoured by the majority of Indian politicians who have become accustomed to it during the period of the Montagu Chelmsford Reforms, and it is feared that without a direct election the Centre may tend to be merely the expression of the separatist feelings of a number of Provinces and that the danger of corruption is increased by placing the choice of representatives in the hands of so low electors On the other hand, we feel grave difficulty in the fact that direct election involves constituencies of very large area and with very large electorates, even on the basis of the franchise proposed in the White Paper In particular, as we are in favour of adult suffrage, whenever that is practicably attainable, we see great difficulties in its application to the Central Government without creating an unwieldy body of logislatures We have, however, been forced to come to a conclusion on the matter, and we consider that the weight of argument falls on the side of direct election. We have already expressed our objections to special representation being given to the landlords, the universities, commerce and industry, and these objections hold good at the Centre as well as in the Provinces We recognize, however, that there is a case for some representation of commerce and industry at the Centre, in view of the character of the questions which will come up for decision here, and we should therefore, as a temporary measure, be prepared to see some representation given to those interests. In other respects, we accept the allocation of seats given in the White Paper, subject to the following variations -

58 The White Paper proposes that in the Federal Assembly Labour should be given ten seats as against twenty-six assigned altogether to the representatives of Commerce and Industry, the landlords and the Europeans We regard this as wholly disproportionate as it would mean that Labour would only have 4 per cent of the total seats from British India, and that a few

thousand Europeans would have a greater voting strength than the many millions of industrial and rural wage earners. As is pointed out by the Indian Franchise Committee, Labour legislation will be predominantly a Federal subject under the new constitution, while the restricted franchise at the Centre will not bring on the electoral roll the same proportion of the working classes as in the case of the provincial legislatures. It is, therefore, especially important that Labour representation should be adequate.

We recommend, therefore, that the seats allotted to Labour should be raised to twenty-six.

We note that according to the White Paper the distribution of seats is to be on a provincial basis. We suggest that this requires modification. Certain trades and industries, such as textiles and railways are distributed over more than one province. If seats should be allocated on a purely provincial basis, certain trade unions would be handicapped, while others would be given more than their reasonable quota of representatiou. We recommend that Labour seats should be fixed on an industrial basis with due regard to provincial considerations.

59. We accept the provisions of the White Paper for the Federal Franchise, Pederal Principle. subject to the amendments which we have suggested in respect of the qualifications of women electors, and to our proposals in regard to Labour representation, but we desire to state that we regard the provision as only a temporary one until a means can be found of extending the franchise and of making the Britisb-India side of the Federal Legislature more representative of the masses of the people.

60. The transformation of British India from a unitary into a federal state Robitions necessitates a complete readjustment of the relations between the Federal and between the Federal and Federation the Provincial Governments. Hitherto the Provincial Governments have been and the subordinate to the Central Government; they are under an obligation to Units. obey its orders and directions, but under the new constitution the representative spheres of the Centre and the Provinces will be strictly delimited, and the jurisdiction of each will exclude the jurisdiction of the other. We are impressed by the possible dangers of a too strict adherence to the principles of The Indian Statutory what is known as Provincial Autonomy. Commission in its recommendations for Provincial Autonomy was, we think, not unaffected by the desire to give the largest possible ambit to autonomy in the Provincial sphere, owing to their inability at that time to recommend responsibility at the Centre. The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop, and perhaps over-develop, a desire for complete freedom of control from the Centre. It is, however, clear to us that there are many matters of administration in which the closest co-operation is needed between Province and Province and also between Provinces and States. It is obvious that there may be differences of policy in regard to irrigation and forests, whereby one unit of the Federation may be injured by another, and the Constitution provides for no redress. We do not think it is possible to give definite powers to the Federal Government in these respects, but we consider that every effort should be made to develop inter-Provincial conferences, whereat administrative problems common to adjacent areas and points of difference may be discussed and adjusted. We think also that where there are definite disputes between Provinces, the Governor-General should be empowered to adjudicate on the appeal of an aggreeved unit, and, unless be thinks fit summarily to reject the application, he should be required to appoint an advisory tribunal for the purpose of investigating the report upon the complaint.

### PART V

# SPECIAL SUBJECTS

61. We have already stated that we are in general agreement with the plan in the White Paper for the distribution of legislative powers between the Centre and the Provinces, and we agree that where in the concurrent field there is a conflict of legislatures the Federal law should prevail, but we see certain difficulties in the provision that the Federation should be forbidden to pass legislation imposing a financial burden on the Provinces. The matter particularly arises in respect of Labour Legislation.

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62 It is proposed in the White Paper that such subjects as Health Insurance and Invalidity and Old Age Pensions should be subjects of Provincial Legislation. We see serious objection to this, and consider that they should be included in the Concurrent List. While it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural, it is undesirable to exclude the possibility of All-India legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should be burdened with obligations not imposed in another. Mr N. M. Joshi, in the Memorandum submitted by him, argued that social insurance should also be included in the list of Federal subjects, but here, again, we consider it would be better that it should be in the con-current list. We consider that in order to obtain an All-India Code of Labour and social legislation it is necessary that the Federal Legislature should have power to pass legislation imposing financial liabilities on the Provincial Governments, but that where this is done grantsin-aid from Federal revenues should be paid to the Provinces and also to such Indian States as are prepared to put in force such legislation. It should, in our view, follow that there should be a central inspection and a measure of control, wherever such grants are made. We consider that there seems much to be said for utilizing the machinery of adoptive Acts as used in Great Britain in connection with Local Government legislation. We have to endeavour to steer a course between delay caused by the difficulty of getting less advanced Provinces to agree to such legislation, and the possibility of friction in such matters as factory legislation as between Province and Province or the Provinces and the States. The mechanism of the adoptive Act supported by grants-in-aid in return for inspection seems to us unobjectionable in theory and useful in practice.

Hesiduary Powers. 63. We recognize that among Indian statesmen there is a considerable difference of opinion in regard to the disposal of residuary powers. Broadly speaking, the Hindu community is in favour of their allocation to the Central Legislature, while the Muslims wish that they should be given to the Provinces. We do not think that this difference of opinion is due to any real disagreement on grounds of constitutional theory, but is dictated by the supposed interests of the two communities, and we feel, therefore, free to consider the matter entirely on its merits, apart from any question of the views that have been put before us by the contending parties. It has generally been the case that in the formation of Federal Constitutions in the early stages centrifugal tendencies have been very strong. These tendencies have in India been reinforced by the fact that a greater degree of responsibility was given under the Montagu-Chelmsford Reforms to the Provinces than to the Centre, and the Representatives of the Provinces have not infrequently tended to press to an extreme the conception of Provincial Autonomy. So that, in fact, a Central Government

becomes nothing more than a weak and ineffective link between a number of autonomous units. We recognize that the composition of the Central Legislature, representing as it will partly the Provinces and partly the Indian States, may seem to reinforce the arguments of those who claim that residual powers should be in the Provinces; but it has been a general experience in Federations that after a period of time it has been found that the powers of the Central Government are insufficient and that too great a degree of autonomy has been given to Provincial units. We are not unmindful of the danger of centrifugal tendencies developing in India, particularly in view of the fact that some Provinces differ from others in the predominance of certain communities, and we should be unwilling in any way to strengthen and encourage tendencies which would work against the unity of India. We therefore consider that in view of future possibilities, it would be wise that the residuary powers should remain with the Centre.

64. We agree with the proposals contained in paragraph 39 of the White Finance. Paper, subject to one change. The paragraph suggests that the Budget will be framed by the Finance Minister in consultation with his colleagues and the Governor-General." We would prefer that the arrangement of the Budget should be in the hands of the Ministry alone, but that it should be their clear duty to make provision for appropriations required for the Reserved Departments and for the discharge of the functions of the Crown in relation to the Indian States, which appropriations will be taken by the Governor-General on his own responsibility. In regard to these appropriations, we note with approval the intimation that the Governor-General "will be enjoined by his Instrument of Instructions to consult his Ministers before reaching any decision on appropriations for the Department of Defence." We also are in general agreement with the proposals contained in paragraphs 56, on page 28 of the White Paper, and the subsequent paragraphs relating to the allocation of revenues between the Federation and the Units. We further agree with proposals 95 to 100 of the White Paper as to the procedure with regard to financial proposals.

As we have already indicated, we are opposed to the creation of Second Chambers, but, in any event, we could not agree to Moncy Bills being submitted to Joint Sessions of both Houses, or, indeed, being controlled in any way by an Upper House. With regard to Federal finance, the White Paper says: . . . the Governor-General, if he is unable to accept the proposals of his Ministers or the decision of the Legislature as consistent with the discharge of any of his special responsibilities, will be enabled to bring the resulting appropriations into accord with his own estimates of the requirements, and if necessary, through his special legislative powers, to secure that the annual Finance Act provides him with resources which will cover the appropriations which he finally authenticates." The Governor-General has, therefore, two justifications for interfering with financial autonomy; (1) The need for ensuring sufficient supplies for his Reserved Subjects and for certain salaries; and (2) a special responsibility for the "safety of the financial stability and credit of the Federation." While the first safeguard is probably necessary, so long as there are Reserved Subjects there should be recognised conditions under which the second responsibility should cease to be operative. We do not hold that the investment of British money forms any justification for special safeguarding. In any event, this should only continue until India has established her independent status as a borrower in the world's money market.

65. We are of opinion that the Financial Adviser to be appointed under the Pi White Paper proposals should not be appointed for an indefinite period, but should have a time-limit of not more than ten years, unless his services are requested thereafter by the Minister. His sphere of advice should be limited to the special responsibilities of the Governor-General, though his advice should

be at the disposal of the Prime Minister and, indeed, of the whole of the Government of India. He should not, however, on any account, be in a position to interfere in the normal sphere of the Finance Member. He should be chosen by the Governor-General in consultation with his Ministers. The White Paper places a special responsibility on the Governor-General for "the safeguarding of the financial stability and credit of the Federation, in order to confer on him powers to step in if the need should arise in the event of the policy of his Ministers in respect of, for example, hudgeting or horrowing heing such as to be likely, in the Governor-General's opinion, to endanger senously the provision of resources to meet the requirements of his Reserved Departments or any of the obligations of the Federation, whether directly or indurectly, by prejudicing India's credit in the money markets of the world." It is in order to assist him in the discharge of this special responsibility that the Governor-General is to be empowered to appoint a Financial Adviser. There is no doubt that the credit of India in the money markets of the world is of primary and overwhelming interest to India, even more than to this country. We agree with the Indian Delegates, therefore, when they state in their Memorandum that the Financial Adviser should be an Adviser to the Indian Government. In view of the Memorandum submitted to us by Sir Malcolm Hailey, it is a vital necessity that, taking into consideration the beavy expense that is bound to be entailed in setting up the new Constitution, with a greatly enlarged franchise, the strictest economy should he observed wherever it is possible, without detracting from the nation-hulding services. We would suggest that the most iruitful fields for the practice of this economy would be (a) in the Army expenditure; (b) in the transfer at as early a date as possible of the terms of future recruitment, pay, etc., of the services to the Governments in India; and (c) in having single-Chamber Government, both for the Federation and the Provinces. We think that the Federal Legislature should be empowered, whenever necessary, to impose financial obligations on the Provincial Legislatures in order to secure uniformity throughout the Federation in connection with labour or social legislation. We agree with the White Paper that a special responsibility for the financial stability of the Provinces should not be imposed on Governors.

Zommerciel Ducrimination. 66. India has, since the inauguration of the present Constitution in 1921, worked under a convention which gives her full autonomy in her fiscal affairs—without any interference from Whitehall on any matters on which the Government of India and the Legislature are in agreement. This followed on the Report of the Joint Committee of both Houses of Parliament of 17th November, 1919. Paragraph 33 of that Report said inter alia that:

"Nothing is more likely to endanger the good relations between India and Great Britain than a belief that India's fiscal policy is dictated from Whitehall in the interests of the trade and commerce of Great Britain. That such a belief exists at the moment there can be no doubt. That there ought to be no room for it in the future is equally clear . . .

"Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she should have the same liberty to consider her interests as Great Britain, Australia, New Zealand, Canada and South Africa."

His Majesty's Government accepted this recommendation and it was intimated to the Government of India by the Secretary of State on 30th June, 1931. The Statutory Commission in their Report quote the statement made by the Secretary of State in March, 1931, that:

"After the Report by an authoritative Committee of both Houses and Lord Curzon's promise in the House of Lords, it was absolutely impossible for me to interfere with the right which I believe was wisely given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first just as we, without any complaint from any other parts of the Empire, and the other parts of the

Empire, without any complaint from us, have always chosen the tariff arrangements which they think best fitted for their needs, thinking of their own citizens first "

In the course of his evidence before us, Sir Charles Innes, who before taking up his duties as Governor of Brima, was on the Council of the Governor-General of India as Commerce Member, said in regard to India's attitude to the

Ottawa agreements

I think it was mainly due to the fact that the Indians realized that it was for themselves to decide whether or not they would ratify that agreement In the old days, before we introduced this principle of discriminating protection, every Indian thought that Britain kept India a free-trade country in the interest of her own trade. When the Fiscal Convention was introduced and when we passed a Resolution in favour of discriminating protection, and the first Steel Bill was passed, we at once transferred all that from the political sphere to the economic sphere, and in recent years in the Indian Legislative Assembly more and more we have been creating a strong Free Trade Party It was getting more and more difficult for me to pass Protection Bills I think that is all to the good, it shows the value of responsibility, and I am perfectly sure that if we had not taken that action, you would never have got the Indian to agree to the British preference on steel, or to the Ottawa agreement, and it seems to me a very good example of the stimulating effect of responsibility "2

We realize the importance of giving full weight to this evidence on the value of placing responsibility on the Indian Legislature, coming, as it does, from one who is in a position to speak with authority

The Statutory Commission further point out that -

"An understanding analogous to the fiscal convention has been arrived at in one other region. The Secretary of State has relinquished his control of policy in the matter of the purchase of Government stores for India, other than military stores. The Governments in India, in agreement with the legislatures, are now free to buy stores in India, in this country, or abroad, as seems best to them, and the Secretary of State though he is by statute responsible to Parliament, has undertaken not to intervene "

There is much force in Mr Baldwin's words -

"All the safeguards are being examined by the Joint Select Committee. but whatever safeguards we have the real safeguard is the maintenance of goodwill If there is not a basis of goodwill, your trade will eventually wither away, and I regret to say that some of the measures which have been suggested and which Lancashire people have been asked to support, have, in my judgment, been calculated to destroy rather than to further any possibility of that goodwill between Lancashire and India which we

can get, which we ought to get, and which we cannot do without
"The boycott has died away . . by a conviction in the min . . by a conviction in the minds of the Indians themselves that we were going to deal honourably with them

and keep our word about getting on with the reforms "4

The same idea is expressed in the Memorandum submitted to us by Sir

n Bahadur Sapru

"The best safeguard that Lancashire, or for the matter of that England, can have for trade and commerce in India, is the goodwill of the people of India ''

We think, therefore, that the time has now come to recognize in the Constitution Act the right and the responsibility of India to settle her own fiscal affairs as freely as and on a basis of equality with Great Britain and the Dominions

<sup>1</sup> Vol I, p 356, para 402

Minutes of Evidence Joint Committee, p 564
Indian Statutory Commission Report, Vol I, p 356, para 402
'Times' 30th June 1933

Record No 10, p 27, para 42, 16th November, 1933

We agree with the British India delegates in their Memorandum suhmitted to us, that the question of Commercial Discrimination might be left to the commercial interests in India and England who would doubtless be able to evolve a friendly settlement hy negotiation. Failing that, we agree that it might be provided in the Constitution Act that anything of the nature of discriminatory legislation should require the previous assent of the Governor-General. We think that the formula proposed by the Indian delegates should be adopted, namely, that the Governor-General should not be entitled to refuse his assent unless he is assured that the object of the legislation is, in the words of the Montagu-Chelmsford Report, "not so much to promote Indian commerce as to injure British commerce," or, as proposed by the Statutory Commission, "in order to prevent serious prejudice to one or more sections of the community as compared with other sections."

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67. We think that the provision for disallowance by the King in Council at any time within twelve months of Acts passed by the Legislature and approved by the Governor-General is a retrograde step for which no reasonable excuse can be put forward. This power which was formerly embodied in some of the Dominion constitutions was finally abandoned by the Statute of Westminster and we see no need to resuscitate it in the case of India.

ndemental fits,

- 68. We are impressed with the insistence with which Indians of all sorts of opinion ask that a statement of their "fundamental rights" should find a place in the new Constitution Act. The Report of the Indian All-Parties Conference also made a strong point of this. The authors of the White Paper "see serious objections" to giving statutory expression to a declaration of this character, and suggest that in connection with the inauguration of the new Constitution a pronouncement on the matter might be made by the Sovereign. We cannot forget that such a pronouncement was made by her late Majesty Queen Victoria in these words:—
  - "We declare it to be our Royal will and pleasure that none be in any wisc favoured, none elected, or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law, and we do strictly charge and enjoin all those who may he in authority under us that they abstain from all interference with the religious helief or worship of any of our subjects on pain of our highest displeasure.
  - "And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity to discharge.
  - "We know and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State, and we will see that generally in framing and administering the law, due regard be paid to the ancient rights, usages, and customs, of India."

We cannot pretend to believe that full effect has been given to the terms of that Royal Proclamation in India. In view of the fact that it has been impressed on the Indian delegates that no pledges or declarations are hinding save such as are embodied in Acts of Parliament, we think the Indian plea is sound, that whenever possible their fundamental rights should be embodied in the Constitution Act and so be secured to them beyond the possibility of

doubt A proposed list of these "fundamental rights" is given in Chapter 7 of the Report of the Indian All-Parties Conference 1 In reference to these

Our first care should be to have our fundamental rights guaranteed in a manner which will not admit their withdrawal under any circumstances With perhaps less reason than we have most of the modern constitutions of Europe have specific provisions to secure such rights

to the people "

They go on very pertinently to say that Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the Certain safeguards and guarantees are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion We could not better secure the full enjoy-

ment of religious and communal rights to all communities than by including them among the basic principles of the constitution "

69 The High Commissioner for India is at present appointed under Wigh Com-Section 29a of the Government of India Act and he has certain powers delegated to him by the Secretary of State for India or the Secretary of State in Council with regard to making contracts The various Dominions appoint their own High Commissioners as a matter of right without any provision heing necessary in their constitutions We think that India should, in this matter, stand in the same position as the Dominions and that the High Commissioner for India should have an equal status and full powers to act on the instructions of the Government of India without any necessity of reference to Whitehall

70 We now come to what we consider to be one of the most important points of the new Constitution—the position of the India Office It is the Self negation of responsible self-government to have an India Office continue Government to exist on anything like the same lines as have obtained since the Crown took over the administration from the East India Company If the Government of India have been an autocracy, the India Office has been much more so It was said by the Viceroy, Lord Chelmsford at the manguration of the present Constitution, that "autocracy is now definitely abandoned" We believe that the time has come to give practical effect to this state of affairs. We should like to see Indian affairs brought at once under the Dominions Office Failing this, and as a step in that direction, our proposal is that the India Office should be done away with entirely and a new Office created with a Secretary of State for the self-governing parts of the British Commonwealth of Nations in the East This would include not only India but also Cevlon, Burma, if separated, and other portions of the British Commonwealth of Nations in the East as and when they became selfgoverning

71 We are strongly of opinion that the Advisers of the Secretary of State Secretary We are strongly of opinion that the Advisers of the Secretary of State should not exceed three in number and should be all India's or — in the Adviser, event of our proposals being adopted for a new Office and Secretary of State for the self-governing portions of the Empire in the East-drawn from such self-governing territories

72 During the three sessions of the Indian Round Table Conference this Railway matter, being of comparatively minor importance, did not come up for discussion It was one of the matters, however, which the Governor General discussed in Delhi with the Consultative Committee There is general agreement that there should be a Statutory Railway Board We are of opinion,

1 Report of the All Parties Conference, pp 101 103

<sup>\*</sup> Ibid p 89

nowever, that this Board should be set up by the Central Indian Legislature to whom it should be responsible. The Minister who is responsible to the Legislature for the Indian Railways and for the Railway Budget should be st officio Chairman of the Railway Board, but we consider that it is undesirable that he should be subject to interpellation on details of administration, particularly those relating to appointments and promotions.

Reserve Bank.

73. The White Paper proposes, in paragraph 32, that a Reserve Bank, "free from political influence, will have been set up by Indian legislation," before the first Federal Ministry comes into being. If it should be proved impossible successfully to start the Reserve Bank, His Majesty's Government "are pledged to call into conference representatives of Indian opinion." We note that neither at the first nor at the second Round Table Conference was the establishment of the Reserve Bank treated as a condition precedent to the inauguration of the Federation. It was an entirely new proposal brought forward at the third Round Table Conference. We understand that the Indian Legislature has already passed a Reserve Bank of India Act, and we venture to hope that the date of its inauguration may be speedily decided, since we understand that the beginning of the Indian Federation depends upon it. Assuming the establishment of the Bank, we suggest that the Governor and Deputy Governor should be selected by the Governor-General in consultation with his Ministers.

We are not in agreement with the underlying conception of the establishment of the Reserve Bank, namely, that it should be entirely free from political influence.

We consider that decision of policy in respect of credit and currency are vital interests of the community. They should not be made by shareholders whose private interests may not coincide with the welfare of the State, but should be influenced by the Government.

In any event it should be made clear that India's currency and credit policy will be decided in accordance with her own needs and not by the influence of external financial interests or foreign creditors.

The Judicature. 74. We are in substantial agreement with the proposals in the White Paper with regard to the future of the Judicature and for the establishment of a Federal Court, but we dissent from the proposal to create a separate Supreme Court of Appeal. We consider that the object in view would be more conveniently attained by giving to the Legislature power to extend the jurisdiction of the Federal Court. We assume that if this were done the Court would sit in two Chambers, the first dealing with Federal and the second with British-India Appeals.

The Public Services. 75. We are generally in agreement with the proposals in the White Paper with regard to the future of the Public Services, but would recommend two alterations. In the first place we consider that despite the strong arguments submitted to us for the retention of recruiting to the Security Services by the Secretary of State, it is preferable, in view of the strength of Indian sentiment on the point that future recruitment for these services should be in the hands of the Governor-General. Secondly we consider that without impairing the efficiency of the administration some acceleration in the rate of Indianization is practicable.

Burne

76. We are in general agreement with the proposals in the White Paper regarding the future constitution of Burma. Despite the conflicting results of recent elections we are convinced that the majority of the people of that country are in favour of separation from India and that the anti-separationist movement is actuated rather by desire to obtain a more advanced constitution for a separated Burma than by a wish to keep their country as a province in an Indian Federation.

We have already in discussing the Indian problem stated our objections to Second Chambers and to the continuation of the Ecclesiastical Establishment and we content ourselves here with saying that the same objections hold good in respect of Burma.

We also would express the hope that the maintenance of communal electorates may be only a temporary phase in the progress towards complete

self-government.

The same is read.

It is moved by the Lord in the Chair that the Draft Report laid before the Committee by himself be now considered.

It is moved by Mr. Attlee, as an amendment to the above motion, that the Draft Report laid before the Committee by himself be considered in lieu thereof.

Objected to.

On Question: -

Contents (4).

Lord Snell. Mr. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (24).

Lord Archbishop of Canterbury.

Marquess of Salisbury. Marquess of Zetland.

Marquess of Linlithgow. Marquess of Reading.

Earl of Derby.

Earl of Lytton.

Earl Peel.

Viscount Halifax.

Lord Middleton.

Lord Ker (M. Lothian).

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan.

Sir Reginald Craddock.

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare.

Sir Joseph Nall.

Lord Eustace Percy.

Sir John Simon.

Earl Winterton.

The said amendment to the above motion is disagreed to.



It is moved by the Lord in the Chair that the original motion, that the Draft Report laid before the Committee by himself be considered, be agreed to:

Objected to.

On Question:-

Sir Samuel Hoare. Lord Eustace Percy. Sir John Simon, Earl Winterton.

Contents (19) Lord Archbishop of Canterbury. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl of Derby. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan, Mr. Davidson. Mr. Foot,

Not Contents (9).
Marquess of Salisbury.
Lord Middleton.
Lord Snell.
Lord Rankeillour.
Mr. Attlee.
Mr. Cocks.
Sir Reginald Craddock.
Mr. Morgan Jones.
Str Joseph Nall.

The original motion is agreed to.

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock.

### Die Martis 19° Junii 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY.

MARQUESS OF SALISBURY.

MARQUESS OF LINLITHGOW.

MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.

EARL PEEL

VISCOUNT HALIFAX.

LORD MIDDLETON.

LORD KER (M. LOTHLAN).

LORD HARDINGE OF PENSHURST.

LORD SNELL.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.

SIR JOHN WARDLAW-MILNE. EARL WINTERTON,

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

PART I\* is again read and postponed.

PART II is considered.

Paragraph 43 is again read and postponed.

Paragraphs 44 and 45 are again read.

It is moved by the Marquess of Salisbury to leave out paragraphs 44 and 45 and to insert the following new paragraph:—

("44. It is unnecessary to discuss how far there have been pledges by this Country to carry out a policy of self-government in India or how far these have been conditional, because the Secretary of State on behalf of His Majesty's Government has stated that the reference to the Joint Committee leaves the recommendations it is to make unreservedly in its hands. Nevertheless, undoubtedly a solemn declaration was made in the last of 1919 that this Country intends to give an increasing measure of self-government to India, and the Committee has been appointed to ascertain how this can best be effected. The White Paper contains the proposals primarily submitted to our consideration, but the White Paper itself has grown out of the Report of the Statutory Commission, and in considering the White Paper we ought to keep constantly in mind not only the facts as the Commission has set them forth, but also the policy recommended in their Report—the outcome of three years close study of the question both here and in India itself.

The Committee, therefore, notes with satisfaction that over a large part of the field of Indian constitutional reform the White Paper and the Report of the Statutory Commission are in general accord, and this by itself places that part of the subject in a special position to command the favourable consideration of Parliament. These two documents agree that the time has arrived when Constitutions for Provincial self-government should be established.

• For convenience it may be noted that this Part I was never considered, as the Committee agreed to consider an alternative Part I laid before them by the Lord in the Chair on the 24th July, 1934, vide infra, pp. 470-491.

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part I).

A Key is attached (vide infra, pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Even if Provincial Constitutions did not have this combined authority behind them, it is reasonable on the face of it that the process of the development of self-government should begin from the bottom. Evidence has been given before us that this is the wish of a great body of orthodox Hindus; indeed, it was urged by witnesses that we ought to begin with the development of self-government in the villages. Even if the revival throughout India of the ancient village councils may he held to be no longer possible, at any rate there is every reason that we should begin as far down as may be in the administrative scale, that we ought to construct the units before we federate them, and that, therefore, our first duty is to develop self-government in the Province. Moreover, it must never be forgotten that the claim of self-government of a Province by the homogeneous people of the Province—of Bengal, for example -by Bengalis or Bombay by Mahrattas-is far stronger than the claim of the many varied races and languages of India to govern India as a whole. It ought, however, at once to be confessed that Provincial Constitutions, even if we go no further, present by themselves many formidable difficulties. To these this Report will return later. It is sufficient to note at this point that such problems as Communal Representation, Indianisation of the Scrvices, the solvency of Provincial finance, the security of Law and Order and the integrity of the Courts, are very complicated and very arduous, and that, therefore, in our view their solution must be tentative, the time having certainly not yet arrived when Parliament can safely wash its hands of the problems which even this Provincial branch of the subject presents.

It follows that the Committee must approach the solution of the further problem connected with the Central Constitution even more cautiously. If the evidence given before the Committee be examined it will be found that no answer has been given to difficulties of great substance which are involved in the proposals of the White Paper for the Central Constitution. With these we proceed to deal subject to this preliminary observation. In the criticisms which follow we must not be taken to underrate the remarkable ability of many Indian Officials and politicians of wborn there were striking examples

in the Indian Delegation acting with the Joint Committee.

The true character of the Indian problem will never be understood unless the essential difficulties which stand in the way of its solution are borne in mind: that is to say the demand for federation without the provision of equality of status in the units; the claim of Indians to self-government notwithstanding the lack of personal experience and inherited guidance which handicaps them in exercising the higher functions of government; the impossibility of any real contact in direct representation between the people and their representatives; the profound communal differences which split Indian Society into fragments impossible to coalesce; the novelty of Provincial reform and its necessarily tentative character, and the reaction of these upon the Central Government. Unless these fundamental difficulties can be met any federal system in India must be unworkable. No useful purpose 1 is served by glossing them over; still less in ignoring them. That is an expedient to which British policy is much accustomed when it is presented with difficulties. We often take refuge in it because we assure ourselves that if these difficulties in practice are found not to work they can always be altered. What is exceptional, however, and vital in the present case is that once the lines of the federal constitution are fixed there can be no retreat. It is this formidable feature in the problem which throws such special responsibility on the Joint Select Committee, a feature and a responsibility which are not always appreciated by expert advisers who are prominent on Indian reform. There are in particular many supporters of the policy of the White Paper who deal in the widest generalities. It is to be doubted whether some of them get further than the simplest fallacious syllogism. The system of government in India has hitherto been authoritarian: it is admitted that this old system must be abandoned: the White Paper abandons it: therefore they approve of the White Paper. The Joint Select Committee cannot be content with an argument on these lines. On the contrary we have been impressed by the general admission that the working of the White Paper policy is highly uncertain. It has been even termed a colossal experiment. The Committee

has considered how far the colossal experiment is likely to overcome the essential difficulties which have been formulated above

And first the White Paper proposes that the several units of the federation shall not have equal constitutional status

This arises from the effort to combine in one Parliamentary federation the States in India and the British Indian Provinces. In the words of a member of the Committee there are two distinct and different forms of government in existence in India, autocratic personal rule in the Irdian States and democratic representative government in British India." It may be added that the personal autocrats are sovereign Princes, owning it is true feudal obedience within certain limits to the King-Emperor, but hitherto completely independent of any purely British Indian authority. It is no matter of surprise that it has been found difficult to weld together in one federation of the normal type units so differently constituted According to the White Paper the British Indian members of the Federal Legislature are to be elected Those representing the States are to be nominees of the Princes It may be asked broadly how long it is likely that a combination of units of such diverse conditions can have any stability. Illustrations of the doubts suggested by this question are to be found in the papers laid before the (ommittee A dissolution of the Assembly by the Governor General would as regards two-thirds of that body, elected in British India, have the ordinary effect. The other third would merely be re-nominated by the same Princes as before—a very truncated form of dissolution Yet this is no small matter, the power of dissolution in the hands of the head of the State is essential to the working of constitutional government. On the other hand though an Indian State representative would have fixity of tenure as against the action of the Governor General we are inclined to think that he would have no fixity of tenure at all as against the Prince, but would hold his seat entirely at the Prince's pleasure. Certain vague assurances it is true were suggested to the Committee, that once they were nominated these State representatives would not be disturbed by their rulers during the term of the legislature But it may be permitted to doubt whether if a representative differed from the Prince he would in fact long continue to hold his seat These however are difficulties in detail a constitutional dilemma of fundamental importance from which there appears to be no issue remains to be mentioned

The Federal Legislature must embrace all parts of Greater India, and in the White Paper must take action upon British Indian questions as well as upon those interesting the federation as a whole The question therefore at once arises are the representatives of the Princes to vote upon issues concerning only British India, with which the States have nothing to do? That perhaps might be admitted as a sort of illogical makeshift if the British Indian representatives were to have a corresponding authority as to the States But this is not to be so The Princes' representatives are by law to have a right to which the representatives of the Provinces would have no corresponding authority The autocratic sovereign rulers of the States would not admit for a moment the intervention of British Indian votes to control their domestic concerns. Nevertheless, their representatives are to be legislators who may have if they please a share in the control of the domestic affairs of British India There is, it is clear, no answer to the dilemma which these provisions of the White Paper present All that could be urged, and was urged, in evidence was that in practice there might be established a convention under which the representatives of the States would exercise a self-denying ordinance and would refrain from using their right to intervene in British Indian affairs How that convention is to be defined was left in the evidence completely undetermined And for a very good reason, that however it is determined it must inevitably break down. It is a commonplace of constitutional government that the legislature by its votes not only enacts laws but appoints and dismisses responsible Governments. The provisions of a Particular measure may interest only British India, yet if it is of sufficient importance for its rejection to involve the existence of the Government,

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this becomes of direct interest to India as a whole, and it is clear that no convention can prevent the representatives of the Princes from taking part in the critical division. It follows that this anticipated convention would break down in the face of any measure of first-class importance upon which the fate of a Government might depend. Neither in theory therefore nor in practice is there any issue from the dilemma.

As an illustration, Income Tax is a notable example of the relative disability under which, under the White Paper, British India would stand Income Tax could be imposed or maintained upon British Indians by the votes of the States, yet except in an emergency the Princes will admit of no Federal authority to impose direct taxation on their own subjects. Incidentally it follows that direct taxation in all its forms, with one rather doubtful exception cannot be used for federal purposes, since the Provinces cannot be asked to bear an unequal burden. The fact is that though the Princes under certain conditions are prepared to accept federation they are not willing unreservedly to accept federal authority. The authority of the King Emperor they willingly acknowledge, but, broadly speaking, as to federal legislation even where they are prepared to accept it they will only carry it out in whatever manner they themselves may consider appropriate. The Princes will take no orders from the federal responsible Government. The federal Government thus can claim obedience to its decisions in some units the Provinces, in other units the States, it can only do so by consent of their rulers.

In considering this subject of the solidarity of the Federation as proposed in the White Paper, it is not out of place to estimate what degree of permanence ought fairly to be attributed to the adhesion to it of the States of discretionary secession would obviously be inadmissible. Yet can we say it is unreasonable, as the evidence on behalf of the Princes claimed, that there should be some such right retained in case of a profound alteration of circumstances Supposing the White Paper Constitution developed bereafter, with the consent, say, of a passing majority in Parliament towards Dominion status, which is the avowed objective of Sir Taj Bahadur Sapru and his friends what then? Dominion status means a Dominion constitution, which would carry with it the power for India to free herself altogether from Impenal authority Assuredly the Princes cannot be held to be bound to such an evolution of federation against their interests, which are bound up with the maintenance of the principle of unquestioned sovereignty. Yet it can scarcely be doubted that if the majority of the Indian delegation were to have its way this is precisely the situation that the Princes may have to face

This question of the right of secession emerged in the Burmese discussion before the Committee, and this is therefore an appropriate place to direct the attention of Parliament to the special difficulties which Burma presents in some ways the case of Burma offers less complication than the case of India. But it has a formidable dilemma of its own. It seems that Burma is in reality opposed to inclusion in the Indian federation and therefore her delegates asked the Committee for a discretionary right to secede. This is clearly inadmissible. On such terms the inclusion of Burma in the federation evidently must be barred. But the alternative of giving her a White Paper Constitution of her own, as is proposed, in the face of the comparative absence of constitutional and political experience seems also indefensible, not to speak of the economic subordination of Burma to India which forbids genuine separation. Yet this is the solution proposed by the supporters of the White Paper.

There is a further difficulty in the general relation of the States to the federation disclosed in the White Paper, which though of an interim character is important. What is to be done in the interests of the States themselves and in the interests of the balance of political power in the federation during the interim period, when only a certain number of them have signified their willingness to join? This problem still awaits the opinion of the Princes before it can be solved.

The second essential difficulty which was mentioned at the beginning of this part of our Report was the lack of personal experience and inherited guidance which limits Indians in exercising the higher functions of government.

It is common ground that without the British Army India could not be defended from foreign aggression. It is equally admitted that in the last resort Britisb troops are necessary to maintain order in India itself. The Committee have realised in the course of its enquiry the vital character of British services in protecting Indians not only from external enemies but from disorder amongst themselves. On the civil side Indians under British training have made immense advances in administrative efficiency. Many of them possess great ability and they have shown remarkable adaptability. to our training in all the manifold details of western administration. But even here few Indians would contend that their Country could for the present be successfully administered without a large measure of guidance by British Yet as the White Paper stands there is little doubt that the services upon which the vast Indian population depends for their security and welfare will under its provisions suffer serious deterioration. This dependence, especially on the side of Defence and Order, appears to us to be inconsistent with genuine self-government. The White Paper itself has regard to this limitation affecting Indians in the higher functions of government, and it provides that the Defence services, together with foreign policy, intimately bound up with these services, are to be reserved to the discretion of the Viceroy alone. But will he be able freely to exercise this discretion? The answer to this question is of deep significance. It must be remembered that the Viceroy in his capacity as Governor-General has to work, as it is proposed, with a Responsible Government and to pay his troops out of the same purse which is alone available to the responsible Ministers for all other federal purposes. However absolute may be the terms in which his unfettered access to this purse may be safeguarded it is evident that in practice the legislature and the Ministers responsible to it will have the strongest inducement to bring pressure to bear upon him, pressure very difficult to resist, in order to help their own political objectives at the expense of the interests of the Reserved subjects. We feel that such a situation is fraught with discord and will invite friction and inefficiency.

This is one of the principal objections to the financial proposals of the White Paper. It does not however stand alone, but it will increase and exacerbate the financial confusion which apart from it may be anticipated. In truth it is admitted that Indian finances at the present moment constitute an insuperable bar to the immediate operation of a federal constitution and indeed make it doubtful whether even the Provincial constitutions can be started forthwith, It has in fact been said by a high authority who is a member of the Committee that the proposed new Constitution will be built on a financial quicksand. must be remembered that not only does the Indian financial system share the general depression but that the proposed changes are themselves expensive and the expectation of social reform, always costly, which have been excited must intensify the adverse position. This is not denied. The alternative to which these admissions have driven the White Paper, namely a Federal Constitution with delayed action, that is to say passed in all its details but bung up, presents difficulties of its own of a formidable character. No one can predict how long the financial stress will continue, but until the conditions which the Indian Problem may present at the end of the period in question are known it would seem to be most unwise to prejudice the future action of Parliament in circumstances yet undisclosed.

But direct financial difficulties are not the only fiscal anxieties in the path of federation. There is one other element in the question of Indian self-government appertaining to the fiscal policy of the future but concerning this Country as well as India, namely, the possibility of Indian discrimination against the commercial interests of the United Kingdom. This of course does not bear upon the question whether Indians are unable properly to exercise any functions of government, though it must not be left out of sight

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in considering the fiscal provisions of the Constitution Act. In this place therefore we would content ourselves with saying parenthetically that in our view it is impossible under the proposals made to us to provide against administrative discrimination and that if a Central Constitution on the lines of the White Paper were to be adopted we should have to rely for fair treatment in these matters upon the good sense and good feeling of the Federal Government

The third essential difficulty belongs to the vast size of India and its population and the attempt to represent it in one federal legislature

The White Paper proposes that British India should be represented in the Ederal Legislative Assembly by a system of direct election. The papers laid before us show that some of the most important representatives of the Princes in the delegation were dissatisfied with the method in which the central legislative bodies are proposed to be constituted. It is, however, not nccessary to go beyond our own experience to convince us that it is impossible with direct election, in the conditions which prevail in India, for the members of the legislature to be in touch with their constituents or able to escape from the acutest form of machine-made electioneering. That would be true as the proposed franchise stands, but nothing is more certain in constitutional development than that the franchise goes through an inevitable process of The prospect in British India with direct election by what night extension ultimately be some 100 million electors voting in constituencies in one case as big as Great Britain, only requires to be stated in order to be dismissed. In place therefore of the proposals of the White Paper various systems of indirect election bave been submitted to the Committee, notably election of the Central Assembly by members of the Provincial Assemblies

But this alternative is by no means without objection. We do not escape the fourth essential difficulty in the solution of the Indian Constitutional problem. Whether the system of election is direct or indirect the profound communal schism makes itself felt.

Some members of the Committee had hoped that by availing ourseives of the system of proportional representation Hindus and Moslems might arrive at a fair representation of their respective communities, but we have been assured that any such method as a solution would never be admitted by Indian opinion Whether the White Paper with its direct election is to be accepted on we adopt indirect election in its place in any case we must fall back upon the principle of the Communal Award, which is in truth inconsistent with genuine self-government. The fact is that religious circumstances in India admittedly are such that a free representative system is unacceptable. In order that a certain proportion of Moslems should be returned to the Assembly, electors are not to be allowed to vote except for candidates of their own creed This is rigidly true of Moslem electors and practically true of Hindus, although it is by the wish of the Moslems and not of the Hindus that this abnormal system appears to be necessary Under the White Paper with its direct election to the Central Legislature, in order to achieve this end an elaborate system of separate creed registers and of differing constituencies is proposed. Some of these complications are escaped if indirect election is substituted in place of the other. But the intermediate electorates it seems must still be separated into two creed parties, Moslems and non-Moslems, on the same principle. The consequence of this creed arrangement is obvious. There will never be an inducement to a member The consequence of this creed to study the interests of any electors outside his own creed. It follows that though indirect election does get rid of many of the fatal objections which direct election presents, it does not obviate the greatest of all, namely, the the perpetuation of a communal division in the political sphere

Indirect election has beyond this certain minor objections peculiar to itself. It prejudices the effective power of dissolution in the hands of the Governor-General not indeed to the same extent as in the case of the States, to which attention has already been called, but still substantially because

unless since the last central election there have been changes in the complexion of the Provincial Assemblies a dissolution is not likely to produce any change in the balance of opinion in the Central Assembly. Even if the strength of parties in the Provincial Assemblies had been modified since the last Central Election the rigidity of the communal and political obligations under which the Provincial chambers would be bound must always tend to make the result a foregone conclusion

In the face of these essential difficulties—the difference of status in the units the want of experience and tradition amongst Indians as to certain functions of government the difficulties of representation in the Central and the communal differences—the White Paper provides a Assembly series of sateguards in the shape of special responsibilities vested in the Governor General to be exercised in his own discretion, for preventing grave menace to peace and tranquility for safeguarding financial stability safeguarding the legitimate interests of minorities for protecting the rights of the Indian States and for certain other purposes to be mentioned here-That they should be admitted at all as being required is by itself a grave criticism of a polk v which is designed to give self government but that these precautions nevertheless correspond to a real necessity in India cannot be denied The question is will they be effective and do the politically minded Indians intend them to be effective? In answer to the second question, there can be no doubt, if the words used by the Indian delegation are to be accepted that they treat all these safeguards as temporary expedients to be swept away within a short period, or at any rate to fall into desuetude We however, find it dishcult to believe that, having regard to the communal situation revealed in the electoral proposals just described, and to the terrorism of which abundant evidence was laid before us, and to the obvious dangers to the interest of minorities and to the clashing of the respective rights of the States and the Provinces there will not be full occasion for the protection aimed at by these safeguards. And the language of Indian delegates which has been cited leads to the conclusion not that the sateguards will not be required but that every effort will be made that they shall not be used The capital importance in particular of the question of law and order appeared abundantly in the cyidence and in the papers laid before the Committee We deal in another part of our Report with this question in the Provincial We indicate in that place that the anti terrorist organisation ought to be directly under the Governor or the Governor-General and the police themselves directly under the Governor where he considers it expedient But the special responsibility of the Governor-General is very important and we have been convinced that he must be really free to exercise his discretion in preventing any grave menace to the peace and tranquility of these poor people who look to us for protection Even assuming that it is the intention to make the safeguards effective with the best will in the world the oper i tion of them will be hampered As has already been suggested in the case of the reserved services in respect of all of them their exercise will be subject to unceasing criticism in the legislature and to pressure by the responsible government for it must be remembered that their whole point is that they should be operative if at all against the wishes of the legislature and of the responsible government otherwise there would be no occasion for them The mischiefs against which they are directed ought to be prevented in the normal way by the responsible Ministers themselves in their own discretion It is only because in these matters the responsible Government cannot be trusted that these provisions are inserted in the White Paper We regard with profound misgiving the prospect of the Governor-General being called upon to use his special powers against the will of his own Ministers natural constitutional course in such circumstances would be to resign. If so, no other Ministers presumably could command a majority and a deadlock must ensue With this eventuality in front of him the pressure may well be too great for the Governor-General to resist

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A minor difficulty is that no provision is contained in the White Paper to enable the Governor-General to have that information which is necessary for him in order that he should know when the exercise of this special responsibility is called for. We helieve that certain amendments might be introduced to mitigate the difficulty and to increase this opportunity, but at the best we doubt whether this object can be satisfactorily achieved.

There is yet a fifth and last essential difficulty stated at the beginning of this part of our Report which has not yet been dealt with—the tentative character of Provincial reform and its bearing upon the Constitution at the Centre.

What power will the federal government have to guide the Provinces, or in the last resort to enforce its decisions upon the Provinces? In the first place there is vagueness in the proposals submitted to us. It must be understood that between the legislative field under the authority of the Centre and the legislative field under the authority of the Provinces there is to be an intermediate field in which the two have concurrent jurisdiction. It has been argued on high authority that the Federal Government neither could nor ought to enforce upon the Provinces the execution of federal legislation in the concurrent field. We are not satisfied that this looseness of administrative authority will make for good government in the future. But it seems quite clear that the contention proves too much, for if the argument is sound that federal legislation cannot be enforced in the concurrent field, there will be an equal federal impotence in the federal field as well. In the case of the States, as has been already shown, the federal impotence is even greater because whereas in the Provinces acceptance of decisions in the federal field is assumed, in the case of the States the federal government as distinguished from the Viceroy has no constitutional right to enforce its authority. It is true that the power over the States of paramountcy resides in the Viceroy and no doubt the federal Ministers will consider themselves entitled to put pressure upon him to use this power for enforcing their wishes. That pressure may possibly be effective, though this is a procedure that the Princes certainly do not contemplate. The provisions however of the White Paper have in these respects never been sufficiently worked out. Similarly the whole problem of the relation of the new constitution to the general law has not been solved and possibly cannot be solved. There is not merely ambiguity in the treatment of repugnancy between Provincial and Federal legislation, but also it seems between either and the legislation of Parliament itself. Anyhow, as between the Provinces and the Federation something more precise than the provisions of the White Paper are evidently required, though it may be gathered that precision would be very unwelcome to many members of the Indian delegation. In the meantime we may shrink from the vast sea of litigation which is opened up by the consideration of these ambiguities. They illustrate the essential difficulty which lies in an effort to create new constitutions for the units and a new constitution for the federation at the same time.

We must however not be understood to suggest that the Central Government would be powerless, but that it would be powerless in guiding aright the new Provincial administrations. Even if the vagueness of the White Paper were eliminated the federal responsible Government will neither be experienced nor disinterested. It will probably be an uninstructed focus of faction and intrigue. Yet in the interests of the Provinces the wise guidance of some central authority is certainly required. We repeat that we do not think the Central Government in the White Paper would be powerless. We are aware that there is in some minds a tendency to pass lightly over the relation of the Centra and the Provinces on the alleged ground of the relative unimportance of the Central as compared to the Provincial Constitutions. It is said that the scope of the Centre is so restricted that even if its conduct is inadequate or unsatisfactory it could in point of fact do very little harm. We believe this to be a total mistake. Appendix VI which prescribes the different categories of legislation for the Centre and for the Provinces certainly restricts

the former, but once they are established the central legislature and government, like all other political organisations, will try to develop their authority No doubt the Provinces in their turn with their constitutions to develop will obstruct the central power where it conflicts with their own, but there will be many occasions in which the two will be combined against the British authority, and the central legislature with its government responsible to it will have, as has been shown in these pages, abundant opportunities for pressure on the Governor General which can be made to subserve the aspirations of the Provinces as well as their own But they will have no power over the Provinces and no disinterested experience to be their guide, and it is clear that the guidance and ultimate control of some Central authority is a necessary element in reform especially in its early stages. The best chance, perhaps the only chance, for the successful issue from Provincial difficulties will be in the strength and goodwill of the Centre Though we are prepared to recommend a far-reaching experiment in Provincial constitutional development upon the lines of the White Paper, we are not insensible to the immense difficulties which will be in its path, indeed, it is evident that many of the risks to which we have called attention in the case of the Centre will apply to the Provinces as well But there is one fundamental difference between the two If experience shows that responsible government in the Provinces should be differently constituted, that the proposed safeguards have been misconceived or are useless, it would be possible for Parliament, either using the authority of the Central power, or directly by its own action, to make such changes as in its wisdom it may see are required But once the Central Legislature is established with its responsible Government upon the lines of the White Paper, short of a catastrophe retreat will be impossible. This Country may watch with dismay a growing misgovernment of the vast masses of the Indian population, and the failure of all the precautions we have taken, and yet may be faced with the practical impossibility by any intervention of its own of making any change. In different parts of India Hindus may oppress Moslems or Moslems Hindus and nothing can be done except at the instance of the responsible Government at Delhi. It may be found that the provisions for the representation of women are wholly inadequate or unwise, as most women's organisations in this Country and in India believe them to be, yet if the oriental prejudice of the Central legislature is unconvinced the British Parliament with all its supposed supreme authority will in fact be powerless

The essential difficulties have been severally dealt with in this Report. The difference of status of the units—the limitation of experience and tradition under which Indians at present stand in exercising the higher functions of government, the impracticability of representative institutions of the White Paper type for the vast sub-Continent of India, the profound communal differences into which India is split up, the necessarily tentative character of the proposed Provincial reforms and its bearing on the Central Constitution—It has been shown that in respect of none of these do the White Paper proposals for the constitution of the Central Government provide any adequate solution or, short of a catastrophe, show any means of retreat in case of failure—Incidentally, we have pointed out the prohibitive position of Indian finance—The Committee therefore must view with grave concern an acceptance of the proposals of the White Paper on this part of the subject

If, then, these cannot be accepted and the Provincial constitutions as proposed alone are proceeded with, subject of course to certain modifications following on the discussions in the Committee, on what lines in our judgment should the Central Constitution in India continue for the present? That is a question to which an answer is obviously required

Whilst the federal proposals as suggested in the White Paper must, we think, be laid aside, the federal objective need by no means be abandoned On the contrary, we would suggest that in this regard Parliament ought to go as far as the recommendations of the Statutory Commission but no further,

that is to say as far as the creation of a Greater Indian Council representing the several units of the States and of British India Parliament may be again reminded, as was done in this Report, of the great authority with which the Statutory Commission spoke in its celebrated findings. There is no question that these were against a Central Constitution to be established forthwith on the lines of the White Paper.

'Federations come about only when the units to be federated are ready for the process, and we are far from supposing that the federation of Greater India can be artificially hastened or that when it comes it will spring into being at a bound "

And again -

we do not think that the evolution of the Constitution at the Centre will necessarily follow this path (viz, Parliamentary institutions) It appears to us that there is a serious danger of development at the Centre proceeding on wrong lines if the assumption is made that the only form of responsible government which can ultimately emerge is one which closely imitates the British Pailiamentary system. It is a feature of that system that the Government is hable to be brought to an end at any moment by the vote of the legislature.

In other words—It must not be assumed that India must have a Central Responsible Government on the lines proposed And again—

"It seems to us most unlikely that if Britain had been the size of India, if communal and religious divisions so largely governed its politics, and if minorities had had as little confidence in the rule of others as they have in India popular government in Britain would have taken this form "

These quotations it is submitted amply confirm the criticisms in this part of our Report Nevertheless, it must be admitted that the establishment of Provincial Responsible Governments by themselves would not be satisfactory It would be useless to shut our eyes to the development of the question of Indian reform in recent years, and we agree with others in looking with hope to the spirit of federation which with the provisional assent of the Princes, has become so prominent Federal development was, of course, explicitly foreshadowed in the Report of the Statutory Commission But the Com missioners were of opinion that the time has not arrived when it is possible to decide upon what lines a Federal Constitution ought to be drawn Our analysis of the difficulties presented by the federal proposals in the White Paper, as will have been seen, fully agrees with this conclusion. Yet we should be loth to abandon federation as the objective. Let us by all means go as far as we can in that direction. In this connection we have been impressed not only by the general attitude of the Princes on this question, but in particular by what we conceive to be a just complaint against the treatment which they have often received from the Government of India We are satisfied that questions in which the States have a substantial interest have often been settled by the Government of India without consulting, or even informing, the Princes of their intention. It was no doubt such considerations as these that led the Statutory Commission to make their recommendation in paragraph 237 of Volume II for a Greater-India Council -

"We wish to suggest that steps should be taken now to devise the creation and setting up of a standing consultative body containing representatives both from British India and the Indian States, with powers of discussion and of reaching and recording dehberative resultion topics falling within the list of matters of common concein."

In other words the proposal is that the Governments of every Provinciand of every State should be represented in a Council, whose advice and assistance the Viceroy should seek on every issue which is of interest to India as a whole. We desire most strongly to endorse this recommendation

It will be seen at once bow long a step this constitutes in the direction of federation But this federal instrument does not involve the unanswerable difficulties which we have found in the proposals of the White Paper There would be no question of unequal powers as between the States and the Provinces There would be no uncertainty as to the character and position of the central Government in relation to the Princes Subject always to the Treaties the attributes and operation of paramountcy are established and well understood Unlike novel experiments it has the stability of tradition and it would be through paramountcy that the central Government in the person of the Viceroy would continue to exercise his authority in Greater There would be no pathless morass to be confronted of direct or indirect election to the central Assembly There would be no anxiety about There would be no extra discrimination, no dilemma about Burma expenditure for offices and officials in Delhi In a word there would be no reason to delay the consummation of the federal principle forthwith Finally the Central Constitution would be on simple lines and simple lines are essential in new development

And yet the new Council would have a great position, because it would have far reaching influence. It is true that this influence would only be advisory and it is indeed this quality which obviates the difficulties just recited. It would be advisory but it would be none the less weighty, indeed such an advisory instrument is on the direct road of constitutional development as we English have understood and followed it Everyone of our institutions has passed through that stage Many of them are advisory still, and even the greatest of them carry the ancient traces upon their formularies The King s Ministers are still termed his advisers, even the archaic formula in which our laws are enacted has no hint of initiative power except in the Sovereign and advice still appears in the enacting words as having embodied historically the essential function of the greatest Parliament in the world. This feature of British constitutional development is not an accident, it is because under the form of advice and under that form alone the elasticity can be found which is required for the growth of representative institutions. Arbitrary rules bounded by rigid conditions can never be developed into a living instrument of government as the growth is developed of an advisory body representing public opinion Under an advisory method there is no reason to define the rights of an Assembly or the special responsibilities of a Governor-The field of discussion in the Council need never be circumscribed whilst on the other hand the Governor-General need never fear the coercion of a Ministerial deadlock For the power of an Advisory Council would depend upon the weight of influence in whose name it speaks, and the responsibilities of a Governor-General would be limited only by his sense of public duty

The Statutory Commission proceed in their Report to elaborate the functions of this Council. They are to have a general scope dealing even with the delicate subject of finance

The Council would provide an opportunity for taking the Indian States into consultation about changes in the tariff "

and indeed about every kind of fiscal legislation. Stretching also beyond specific issues to general questions of policy

It may well be, however, that an even more important part of the work of the Council would be concerned with questions of general policy falling within the schedule of matters of common concern

The views of the Council are to have access as of right to the Legislature and to the Princes

The views formed by the Council would be recorded in a Report, which would include the record of any dissenting minority and this Report should be furnished to the Central Legislature as well as to the Chamber of Princes

and further.

"We think that some machinery might be devised by which, at any rate, in important cases, these views might be expounded to the Central Legislature and to the Chamber of Princes"

So that, as has been indicated above the Princes would be fully consulted on all matters of common concern, which would embrace specific proposals as well as questions of general policy, and thus any legitimate grievance of the past would be fully met

Such is the proposal towards federation of the Statutory Commission. Further than this we do not think it would be wise for the present to proceed With the addition then of this Greater-India Council in the Central Constitu tion the existing Legislature and Executive, somewhat as provided in Proposal 202 of the White Paper, should for the present remain, but of course with diminished scope In the first place the Central Legislature would be deprived of those functions which are to be transferred to the Provinces In the second place a further limitation would be wise (in this respect again on the same principle as contained in the scheme of the White Paper), namely it should have no authority on the reserved subjects of Defence or Foreign Policy as therein defined Besides these there is one other consideration which has become apparent in the discussions of the Committee and which if the present Central Constitution in any form is to continue requires attention, namely, the weakness of the Central Executive This has proved to he a serious blemish as things stand and will be increasingly mischievous in the face of the inexperienced autonomy of the Provinces It will be remembered how in our deliberations the Indian delegates criticised the proposed provision by which the Governor or the Governor-General could only pass an Act on his own authority of a permanent character after incurring all the friction of a difference with the Legislature. This criticism seems directly in point as against the existing system of certification. It would conform at once both to strength and smoothness of operation if the prerogative power of the Governor General took the simple shape of an ordinance, to be issued either with or without a preliminary discussion in the Legislature, and either as a temporary or permanent enactment as the circumstances may require

Arising partly from these enanges there are one or two other modifications which would be required. It must be admitted that in the circumstances contemplated there might be some danger lest the Executive might to a certain extent lose touch with the legislature and with the public opinion which it represents. To minimise this danger the existing disablement of members of the Assembly from forming part of the Executive Council might be removed. The Governor-General should himself nominate his Council and should have an unrestricted field to nominate his Council either from within or without the Legislature as he should find best for the public service.

It will be noticed that in this Central Constitution as here proposed, whether in respect of the Greater India Council or the Executive Council or the Central Legislature, it is intended to do without the mass of hampering restrictions which form so large a feature in the White Paper There are indeed hardly any restrictions which are needed to limit the discussion in the Greater India Council The same is generally true of the Central Legislature as it will continue to exist, except in respect of those mentioned in the present Government of India Act That this simplicity should become possible is in itself a great desideratum. It is true that the restriction method with all its complication will still be tried out in the Provinces There would seem to be no other course open to us But in that case there will be, as has already been said, comparatively little difficulty in modifying it hereafter as experience may prescribe. The case of the Centre is much more critical The real and and the consequence of a mistake much more formidable reasonable safeguard there ought to he, not in probibiting discussion or in prescribing complicated and arbitrary limitations of authority (which are inconsistent with any genuine system whether of self-government or otherwise) but in full freedom for the representative bodies either to advise or to enact as the case may be, conditioned only by an unfettered power of the Governor-General, negatively by veto or positively by ordinance, to secure what the public interest requires.

In our view, then, the safeguards ought if possible to be simple, but whatever view is taken of simplicity in this connection, at any rate when we are establishing a Central form of Government from which there can be no retreat, there must be an assurance of solidarity between the Governor-General and his Ministers. The device by which he is conceived as exercising his prerogative powers in the teeth of his own Ministers is, we should think, unprecedented and must surely be accepted with the greatest reluctance. We are not prepared to accept it. In the present stage, therefore, of Indian development the Executive Ministers in the Centre should not be subject to the control of the Legislature. They should no doubt do their utmost to carry with them the support of public opinion as represented there. They may or may not be themselves members in the Legislature, but as Ministers they should be responsible only to the Head of the State.

In submitting these recommendations we regret that they are not in conformity with the views of the Indian delegation for whose ability and position we desire to express the greatest respect. But members of the Imperial Parliament have a unique experience in making and working Constitutions and we conceive that we have an overwhelming responsibility to the millions of our fellow subjects in India, wholly uninstructed in these matters, to protect them from the risk of profound constitutional mistake.")

Objected to.

On Question :-

Contents (5)

Marquess of Salisbury. Lord Middleton. Lord Rankeillour. Sir Reginald Craddock. Sir Joseph Nall. Not Contents (21)

Lord Archbishop of Canterbury. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Hutchison of Montrose. Mr. Attlee. Mr. Butler. Major Cadogan. Mr. Cocks. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Mr. Morgan Jones. Lord Eustace Percy. Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

Paragraphs 44 and 45 are again read.

The further consideration of paragraphs 44 and 45 is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

### Die Mercurii 20° Junii 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYITON.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEULIOUR

MR ATTLEF.
MR. BUTLER
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Yesterday are read.

Paragraphs 46 to 159 are again read and postponed.

Paragraphs 160 to 227 are again read.

It is moved by the Earl of Lytton to leave out paragraphs 160 to 227 and to insert the following new paragraphs.—

# III. RESPONSIBILITY AT THE CENTRE

("Having accepted the view expressed in the White Paper that it is desirable to establish a Federal Government at the centre for the whole of India, we have now to consider what form that Government should take. For reasons which we shall explain, we have not felt able to accept the proposals of the White Paper as regards the Federal Government, but before stating the alternative proposals which we recommend it may be useful to summarise briefly:—

- The present constitution of the Central Government.
- (2) The proposals of the Statutory Commission for its modification.
- (3) The proposals of the White Paper for the composition of the Federal Government.

### 1. The Present Central Government

The present executive authority in India, both in civil and in military matters, is the Governor-General in Council. The members of the Governor-General's Executive Council, of whom not less than three must be persons who have been for at least ten years in the service of the Crown in India, are appointed by the Crown, and their appointments are in practice for a term of five years, though there is no statutory limit. The Commander-in-Chief is ordinarily, though not necessarily, a member of the Council, and in that case has rank and precedence next after the Governor-General himself. The present Council consists of six members (of whom three are Indians), in addition to the Governor-General and the Commander-in-Chief. The Governor-General presides at meetings of his Council, and the decision of the majority of those present prevails, though the Governor-General has a casting vote in the event of an equality of votes, and may, if any measure is proposed which in his judgment affects the safety, tranquillity or interests of British India, or any part thereof, overrule the Council. The three members of the Council

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published. (Vol. I, Part I.)

A Key is attached (vide infra, pp. 521-541), showing on which pages of the Proceedings amendments to each paragraph can be found.

who are required to have been in the service of the Crown in India are invariably selected from the Indian Civil Service, the post of Law Member has for some years past been filled by an Indian lawyer, and that of Finance Member by a person with financial experience from the United Kingdom An official is not qualified for election as a member of either Chamber of the Central Legislature, and if any non official member of either Chamber accepts office under the Crown in India his seat is vacated, but every member of the Governor General's Council becomes an ex-officio member of one of the Chambers and has the right of attending and addressing the other, though he cannot be a member of both The Executive Government is not responsible to the Indian Legislature but only to the Secretary of State and thus to Parliament, and the Governor-General in Council, if satisfied that any demand for supply which has been refused by the Legislative Assembly is essential to the discharge of his responsibilities, can act as if it had been assented to, notwithstanding the refusal of the demand or any reduction in its amount by the Legislative Assembly The Governor-General himself has also power in case of emergency to anthonse such expenditure as may in his opinion be necessary for the safety or tranquillity of British India, or any part These provisions secure the complete independence of the Executive, though the Legislature can and does exercise an influence upon policy an a marked and increasing degree

The present Central Legislature in India consists of two Chambers. The Upper Chamber, called the Council of State, consists of 60 members, of whom 34 are elected on a high property qualification and 26 are nominated. The President is appointed by the Governor-General for a period of five years, which is the duration of the Council.

The Lower Chamber, called the Legislative Assembly, consists of 145 members, of whom 105 are elected from Provincial constituencies, on the same frinchise as for the Provincial Legislative Councils, but with rather higher electroial qualifications, 26 are official members, and 14 are nominated non-officials, including one representative of the Depressed Classes, the Indian Christians, the Anglo-Indian community, the North-West Frontier Province, the Associated Chambers of Commerce, and Labour interests, respectively. The Legislative Assembly elects its own President, and its duration is limited to three years

## 2 The Proposals of the Statutory Commission

The Statutory Commission proposed the continuation of the Legislative Assembly (with the title of "Federal Assembly") and the Council of State, as two Chambers of the Central Legislature, but they recommended a system of indirect election for the membership of each of these Chambers. The members of the former were to be elected by the method of proportional representation by the Provincial Councils, those of the latter by the Provincial Second Chambers where they existed, or failing this by the Provincial Councils. The Central Executive, according to the r. Report, would continue to be the Governor-General in Council, the only change being that the Executive Councillors would in future be selected by the Governor General. They further recommended that for the purpose of promoting closer co-operation between British India and the Indian States in matters of common concern for India as a whole, a Council for Greater India should be established, containing representatives both of the States and of British India, to deliberate and advise upon matters scheduled as ' of common concern'

For reasons which are set forth in their Report, the Statutory Commission were unable to explore more fully the subject of Federation, and the appointment of an Advisory Council for the whole of India was as much as they felt able to recommend at that time. Since then, however, the idea which they were first to suggest has been further examined and discussed at the three Round Table Conferences, and we ourselves have heard a large body of evidence on the proposals of the White Paper. We consider, therefore, that

it is now possible to go further than the Statutory Commission in recommending the establishment of a central Executive and Legislature, which shall be responsible for carrying out the functions of a Federal Government; but we have had in mind that the units which form the Federation will differ fundamentally in character, and we have sought to establish a Government which would recognise and be compatible with the continuance of their respective characteristics. We consider it essential that the Legislature which represents the Confederate units should be fully responsible, and indeed the Princes bave made it clear that they would only consent to join a Federal body which had this character. For this reason we are not prepared to recommend the establishment of a merely Advisory Council such as was contemplated by the Statutory Commission.

# 3 The White Paper Proposals

The White Paper proposes that, as in the case of the Governor in a Province, the executive power and authority of the Federation shall vest in the Governor-General as the representative of the King This power and authority will be derived from the Constitution Act itself, but the Governor-General will also exercise such prerogative powers of the Crown (not being powers inconsistent with the Act) as His Majesty may be pleased to delegate to him. The former is to include the supreme command of the military, naval and air forces in India, but it is proposed that power should be reserved to His Majesty to appoint a Commander-in-Chief to exercise in relation to those forces such powers and functions as may be assigned to him In relation to a State which is a member of the Federation the executive authority will only extend to such matters as the Ruler has accepted as falling within the federal sphere by his Instrument of Accession It is then proposed that there shall be a Council of Ministers, chosen and summoned by the Governor-General and holding office during his pleasure, to aid and advise him in the exercise of the powers conferred on him by the Constitution Act other than his powers relating to (1) defence, external affairs and ecclesiastical affairs, (2) the administration of British Baluchistan, and (3) matters left by the Act to the Governor-General's discretion. In respect of certain specified matters the Governor-General, like the Governor of a Province, is declared to have a special responsibility", and his Instrument of Instructions will direct him to be guided by the advice of his Ministers at the sphere at which they have the constitutional right to tender it, unless in his opinion one of his special responsibilities is involved, in which case he will be at liberty to act in such manner as he judges requisite for the fulfilment of that special responsibility, even though this may be contrary to the advice which his Ministers have tendered.

The White Paper proposes that the Federal Legislature shall consist of the King, represented by the Governor-General, and two Chambers, to be styled the Council of State and the House of Assembly—The Council of State is to consist of not more than 260 members, of whom 150 will be representatives of British India, not more than 100 will be appointed by the Rulers of States who accede to the Federation, and not more than 10 will be nominated by the Governor-General in his discretion—The Governor-General's Counsellors, who will be ex-officio members of both Chambers for all purposes except the right of voting, are not included in the above figures, and it is provided that the members to be nominated by the Governor-General shall not be officials—Ihe House of Assembly will consist of not more than 375 members, of whom 250 will be representatives of British India, and not more than 125 will be appointed by the Rulers of States who have acceded to the Federation

The representatives of British India in the Council of State will to the number of 136 be elected by the members of the Provincial Legislatures, by the method of the single transferable vote Indian Christian, Anglo-Indian and European members of the Provincial Legislatures will not be entitled to vote for these representatives, but 10 non-provincial communal seats will be reserved for them (7 for Europeans, 2 for Indian Christians,

and 1 for Anglo-Indians), these scats being filled by three electoral colleges, consisting respectively of the European, Indian Christian and Anglo-Indian members of the Provincial Legislatures, and voting for the European and Indian Christian seats being by the method of the single transferable vote. Coorg, Ajmer, Delbi, and Baluchistan will each have one representative. Members of the Coorg Legislature will elect to the Coorg seat, but special provision is to be made in the case of the other three.

The representatives of British India in Honse of Assembly will be elected by direct election in provincial constituencies, except in the case of three of the seats reserved for Commerce and Industry, and one of the Labour seats, where the constituencies will be non-provincial. Election to the scats allotted to the Muhammadan, Sikh, Indian Christian, Anglo-Indian and European constituencies will he by voters voting in separate communal electorates; and all qualified voters who are not voters in one of these constituencies will be entitled to vote in a general constituency. Election to the seats reserved for the Depressed Classes out of the general seats, will be in accordance with the arrangements embodied in the Poona Pact, which we have described elsewhere. Election to the woman's seat in each of the Provinces to which such a seat is allocated will be by members of the Provincial Legislature voting by the method of single transferable vote; the special seats assigned to Commerce and Industry will be filled by election by Chambers of Commerce and other similar associations; and the special seats assigned to landowners will be filled by election in special landholders' constituencies,

It will be seen that these proposals go much further in the direction of establishing a responsible Government at the centre than those of the Statutory Commission. In our opinion, however, the proposals of the White Paper have two serious defects which have led us to reject them. In the first place, the responsibility of the Federal Ministers will be restricted to certain departments, whilst for other departments the responsibility will be vested in the Governor-General. The effect of these proposals would be to reproduce at the centre a form of Dyarchy, which experience has shown to be one of the chief defects of the Montagu-Chelmsford reforms, and we endorse everything which was urged in their Report by the Statutory Commission against such a course. In our opinion, to adopt the proposals of the White Paper would be to ignore the lessons of the past, and to invite at the centre, where the consequences would be much more serious, the same friction and deadlocks which Dyarchy has produced in the Provinces.

The second objection which we feel to the proposals of the White Paper is that they do not sufficiently take into account the divergent character of the units which it is sought to federate; and by adopting a democratic basis for the Federal Legislature they necessarily invite future agitation to change the character of the Government in the Indian States.

At the present time there are two systems of Government in Indiathe personal rule of the Indian Princes, which is indigenous and traditional, and the democratic representative institutions which are in process of being established in the Provinces of British India, as the consequence of British rule. This latter form of Government is still on its trial and though it is the avowed object of Parliament to make such changes in the Constitution as will ensure the ultimate success of this system in the British Indian. Provinces, it cannot be said that this object has yet been accomplished. The proposals of the White Paper, and the recommendations we have ourselves made for the establishment of autonomous self-governing Provinces, will we hope facilitate the successful development of democratic institutions in those Provinces. But we are strongly of opinion that any Federal Government which is established in India in present conditions should hold the balance evenly between the two existing systems of Government, and should be capable of being adopted in the future as experience may prove to be desirable.

The facts which appear to us to be unquestionable in the Indian situation to-day are —

- (1) That both in the Indian States and in the Provinces of British India there are men fully qualified to discharge executive and legislative responsibilities and that it is desirable without further delay to entrust such responsibilities to those who are qualified to exercise them
- (2) That the low standard of education of the mass of the people and the presence of acute communal differences make the establishment of any truly representative system of Government immensely difficult

In our view the chief problem which confronts Parliament at this moment is how to secure the transfer of responsibility to those qualified to exercise it, without endangering the safety of the immense interests of which the Government of India is the trustee, by premature experiments in a vistem of representation for which India is at present unfitted. The White Paper makes the mistake of transferring only a qualified responsibility to men who have been selected by a system of representation which bristles with difficulties and which no one can regard as wholly satisfactory. In an attempt to approximate to the Westminster model the wholly different conditions of India, it proposes to establish a Constitution so complicated that even men of long Parliamentary experience would find it difficult to work, and which, owing to the divided responsibility which is inherent in its proposals, is more likely to provide discord than establish harmony. In our opinion, a far simpler and more workable solution can be found, and one which is better suited to existing conditions.

# Our oun Proposals

Bearing these considerations in mind, we may now proceed to formulate the alternative proposals we are disposed to recommend

We will consider first the Federal Legislature All the difficulties with which we have been confronted throughout our enquiry on such subjects as the composition of the two Chambers proposed in the White Paper, the ments of direct or indirect election, the basis of the franchise, the representation of special interests, the communal award, etc., arise from the attempt to place upon the general population of British India the responsibility of electing representatives in the Federal Legislature If we were attempting to federate the self-governing Provinces alone, this would, of course, be necessary Such was the problem which confronted the framers of the Government of India The Central Legislature then created dealt with British India Act in 1919 alone, and it was inevitable that having introduced representative legislatures in the Provinces, an attempt should be made to create a representative Legislature at the centre Again, if the Governments of the Indian States had a representative character, in federating them with the British Indian Provinces it would be necessary to give the people of those States a voice in the election of the Federal Parliament But that is not the problem which now confronts us. We have to federate the Governments of the British Indian Provinces with those of the Indian States There is no question today of giving representation to the peoples of the Indian States, and until that is done there is no necessity to give direct representation to the peoples of British India

We therefore propose that at this stage the Federal Legislature should consist of representatives of the various confederate Governments. For this purpose two Chambers are not required, and there would be no object in creating two Chambers to represent the same authorities. We propose that the Federal Legislature should consist of one Chamber composed of the nominees of the various Governments. The Princes who join the Federation would appoint the representatives of their States, and the Governor acting with his Ministers would appoint the representatives of each British Province. The total number of the Legislative Chamber, and the proportion to be assigned

to the States or the one band, and the Provinces on the other, and within those categories the numbers to be assigned to each Province are shown in an Appendix. These numbers may require further consideration, if the principle we have advocated is accepted. We have tentatively assigned one third of the total House to the States and two-thirds to the Provinces. The proportion assigned to each Province follows as closely as possible the lines proposed in the White Paper.

The simplicity of such a procedure is obvious and needs no elaboration. It would avoid all the difficulties created by the White Paper, a consideration of which has occupied so much of our time. The objections which will be raised to it are equally obvious. Those who can only think of Indian constitutional development in terms of British experience, will, of course, protest that such a procedure would involve a departure from the principle which has hitherto been followed in previous constitutional changes already carried out in India But, as we have already pointed out, the problem of establishing a I ederal Constitution in India in present conditions is without parallel in the history of the world and no precedents are therefore germane. What we have to do is to create a form of Government to which Parliament will think it safe and wise to transfer responsibility, and we can think of no form of legislature to which such responsibility could be more safely transferred than one which consists of representatives of Governments which themselves enjoy such responsibility in their respective spheres.

Under the Constitution which we recommend, the peoples of British India will elect the Parliament to which the Provincial Governments will be responsible, and within the area of each Province democracy will be given for the first time full scope for its successful operation. As we have already said, the principle of personal rule exists in the States, and no one suggests that the States' representatives can be responsible to anyone but the head of their State. The Federal Parliament, therefore, which we propose will accurately represent the responsible elements throughout India, and the composition of such a Parliament would in no way prejudice the continuance side by side of the two systems of Government now existing. There is no ground for supposing that the Central Federal Legislature so composed would not be as faithful an epitome of the actual conditions prevailing in India to-day as the complicated constitution proposed in the White Paper, and there is every ground for believing that it would work much more harmonously

#### The Federal Executive

We now approach the question of the Federal Executive As we have already said, we believe that there is sufficient material in India from which a competent body of Ministers could be drawn, capable of discharging the functions of an Executive Government. We think that the Governor-General should be free to select his Ministers at his discretion from this material, outside the ranks of the acting Civil Services, and if the Legislature is composed in the manner we have suggested, we see no reason why the Ministers should not be made responsible for it. The Governor-General should be given a special responsibility for the subjects specified in the White Paper, just as the Governor is given a special responsibility in the Provinces, but we do not recommend that a system of dyarchy should be created by reserving any departments from the sphere of the Legislature

In the Constitution we recommend the Governor-General, acting with his Ministers, would be responsible for the administration of all Federal subjects. The Ministers would be members of the Legislature and would retain office only so long as they retained its confidence. A vote of no-confidence in the Ministry would place upon the Governor-General the obligation to appoint other Ministers who would be acceptable to the Legislature, and the power of dissolving the Legislature would, of course, rest with him

These proposals may appear unacceptable at first sight to those whose minds have hitherto travelled along the lines of British Parliamentary procedure, but if the actual conditions in India are studied, we believe that such a Federal Constitution as we have suggested will be found more suitable to those conditions as they now exist, than the complicated proposals of the White Paper At the same time, it would be capable of development from time to time as circumstances required. Once the practice of Parliamentary Government had been established, the process of increasing the representative character of the Central Legislature could be undertaken gradually as experience proved its justification.

The mam difference between our proposals and those of the White Paper is that the White Paper would establish a Legislature which professed to be fully representative of the people of British India, and would withhold from it full responsibility for all Federal subjects, whereas we would establish a Legislature which did not profess to represent the people but did represent the Governments of all the units of Federation, and to that Legislature we would accord full responsibility The White Paper would look to the future to increase the responsibility of the Legislature—we would look to the future to increase its representative character. We believe that our proposals would better accord with the known facts of the situation, for India to-day is ready for responsibility, it is not ready for popular representation would accord at once recognition of what is available and leave to the future the gradual realisation of conditions which only time and experience can produce. The White Paper asks India to wait till to-morrow for the responsibility she is capable of realising to-day, and offers her to-day the outward forms of a representative system which cannot be made real and effective for many years to come.

### APPENDIX I

## COMPOSITION OF THE FEDERAL LEGISLATURE

Total number 300, of whom 200 will be nominated by the Provincial Governments, and 100 by the Indian Princes.

Distribution	of numbers	as between	the Provinces	_

Madras				• •	• •		• •	32
Bombay			• •		• •	••		26
Bengal	• •	• •	• •			• •	• •	32
U.P	• •		••				٠.	32
Punjab	• •	••	• •	• •				26
Buhar	• •	• •	••	• •			٠.	26
C.P			• •	• •	• •	• •	• •	10
Assam	••	••	••	••	• •	• •	• •	4
NWFP.	••	• •		••	• •	• •	• •	4
Sind	• •	••	••	• •	• •			4
Orissa	• •	• •		••		• •	• •	4
			1	otal			• •	200

The said amendment is disagreed to.

Paragraphs 160 to 227 are again read.

The further consideration of paragraphs 160 to 227 is postponed.

Paragraphs 228 to 453 are again read and postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock,

## Die Veneris 22° Junii 1984

#### Present:

LORD ARCHBISHOP OF CANTERBURY.

LORD CHANCELLOR.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW.

MARQUESS OF READING.

EARL OF DERBY. EARL PEEL.

VISCOUNT HALIFAX.

LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MAJOR CADOGAN. SIR REGINALD CRADDOCK. Mr. Davidson. SIR SAMUEL HOARE.

Mr. Morgan Jones. Sir Joseph Nall. LORD EUSTACE PERCY.

SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

PART II is again considered.

Paragraph 43 is again read.

It is moved by Sir John Wardlaw-Milne. Page 21, lines 8 to 14 to leave out from ("basis") in line 8 to the end of the paragraph and to insert ("for the setting out of our conclusions although we desire to make it quite plain "that our deliberations have in no way been restricted to the proposals " which it contains.")

The same is agreed to.

Paragraph 43 is again read.

The further consideration of paragraph 43 is postponed.

Paragraphs 44 and 45 are again read and postponed.

Paragraph 46 is again read.

It is moved by the Marquess of Salisbury. Page 22, lines 6 and 7, to leave out from the first ("sphere,") in line 6 to the end of the sentence.

The amendment by leave of the Committee is withdrawn.

It is moved by the Marquess of Salisbury. Page 22, line 20, after (" White "Paper,") to insert ("except to the extent of certain special powers conferred upon the Governor-General").

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 47 to 50 are again read and postponed.

Paragraph 51 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 24, line 38, to leave out (" device ") and to insert (" method ").

The same is agreed to.

It is moved by the Marquess of Linlithgow on behalf of Sir Austen Chamberlain. Line 40, to leave out (" to ").

The same is agreed to.

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part I).

A Key is attached (vide infra, pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 51 is again read, as amended

The further consideration of paragraph 51 is postponed.

Paragraph 52 is again read and postponed.

Paragraph 53 is again read.

The following amendments are laid before the Committee.

Sir John Wardlaw-Milne to move. Page 25, lines 21 and 22, to leave out from the beginning of the parsgraph to ("We") in line 22 and to insert ("Although we do not regard this plan as in any way ideal and "would have preferred to avoid it, we believe it to be the only solution "possible in the present conditions in India and we therefore accept "it.")

Sir John Wardlaw-Milne to move. Page 25, lines 28 and 29, to leave out from ("Provinces.") in line 28 to the end of line 29.

The consideration of the said amendments is postponed.

It is moved by Mr. Attlee and Mr. Morgan Jones. Page 25, lines 21 to 49, to leave out from (" one,") in line 21 to the end of the paragraph and to insert (" We do not think that this difference of opinion is due to any real "disagreement on grounds of constitutional theory, but is dictated by the "supposed interests of the two communities, and we feel, therefore, free "to consider the matter entirely on its merits, apart from any question "of the views that have been put before us by the contending parties. "It has generally been the case that in the formation of Federal Con-" stitutions in the early stages centrifugal tendencies have been very strong. "These tendencies have in India been reinforced by the fact that a greater "degree of responsibility was given under the Montagu-Chelmsford "Reforms to the Provinces than to the Centre, and the Representatives "of the Provinces have not infrequently tended to press to an extreme "the conception of Provincial Autonomy. So that, in fact, a Central "Government becomes nothing more than a weak and ineffective link "between a number of autonomous units. We recognize that the "composition of the Central Legislature, representing as it will partly "the Provinces and partly the Indian States, may seem to reinforce "the arguments of those who claim that residual powers should be in "the Provinces; but it has been a general experience in Federations "that after a period of time it has been found that the powers of the "Central Government are insufficient and that too great a degree of "autonomy has been given to Provincial units. We are not unmindful " of the danger of centrifugal tendencies developing in India, particularly " in view of the fact that some Provinces differ from others in the pre-"dominance of certain communities, and we should be unwilling in "any way to strengthen and encourage tendencies which would work " against the unity of India. We therefore consider that in view of "future possibilities, it would be wise that the residuary powers should "remain with the Centre.")

The same is disagreed to.

It is moved by the Lord Eustace Percy. Page 25, to leave out paragraph 53 and to insert the following new paragraph:—

("53. This scheme of allocation of powers has obvious disadvantages. It will be observed that, for the purpose of reducing the residuary powers to the smallest possible compass, the lists of subjects dealt with in all three Lists are necessarily of great length and complexity; whereas (apart from the question of the Concurrent List) if it had been possible to allocate residuary legislative powers to e.g., the Provinces, only a list of Central powers would have been required, with a provision to

the effect that the legislative powers of the Provinces extended to all powers not expressly allocated to the Centre; and conversely, if the residue had been allocated to the Centre. This broadly is the plan which has been adopted in Canada and Austrialia, the residuary powers being vested, in the case of Canada, in the Dominion Legislature, and, in the case of Australia, in the Legislatures of the States. Even so, experience has unhappily shown that it has been impossible to avoid much litigation on the question whether legislature or a particular subject falls within the competence of one Legislature or the other; and it seems clear that the attempt made in the White Paper to allocate powers over the whole field of legislation by the expedient of specific enumeration must tend considerably to increase the danger of litigation by multiplying points of possible inconsistency.")

The same is agreed to.

New paragraph 53 is again read.

The further consideration of paragraph 53 is postponed.

Paragraph 54 is again read.

It is moved by The Lord Eustace Percy. Page 26, to leave out paragraph 54 and to insert the following new paragraph:—

"54. On the other hand, there are two grounds on which the White Paper scheme may he defended, one of immediate political expediency and the other of constitutional substance. On the first point, we gather from our discussions with the Indian delegates that a profound cleavage of opinion exists in India with regard to the allocation of the residuary legislative powers; one school of thought, mainly Hindu, holding as a matter of principle that these powers should be allocated to the Centre, and the other, mainly Muhammadan, holding not less strongly that they should be allocated to the Provinces. Where apparently irreconcilable difference of opinion thus exists between the great Indian communities on a matter which both of them appear to regard as one of principle, the proposals of His Majesty's Government may be defended as a reasonable compromise. On the point of constitutional substance, it seems to us that, if a choice were to be made between the two alternative principles to which we have just drawn attention, the logical conclusion of the proposals in the White Paper would be the allocation of all residuary legislative powers to the Provincial Legislatures; but this solution would, we think, require to be accompanied by the insertion in List I of some general over-riding power of central legislation in matters of All-India concern, since a new subject of Legislation cannot be left to fall automatically into the Provincial field, irrespective of its national implications. But it is precisely an over-riding clause of this kind which has led to litigation in other non-unitary States. On the whole, therefore, we are unwilling to recommend an alteration of the White Paper proposal in a field in which experience shows that no wholly satisfactory solution is possible.")

The same is agreed to.

New paragraph 54 is again read.

The further consideration of paragraph 54 is postponed.

Paragraphs 55 to 57 are again read and postponed.

Paragraph 58 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 28, lines 12 to 14, to leave out from ("elsewhere") in line 12 to ("in") in line 14

The amendment by leave of the Committee is withdrawn.

Paragraph 58 is again read.

The further consideration of paragraph 58 is postponed.

Paragraph 59 is again read and postponed

Paragraph 60 is again read.

It is moved by Mr Attlee and Mr Morgan Jones Page 29, lines 5 to 9, to leave out from ("controversy,") in line 5 to the end of the sentence and to insert ("We have fully considered the representations made to us by "Oriya and Telegii witnesses and the views of the Government of India and "of the provincial Governments concerned. We have also studied the "reports of the three inquiries which have been held on the subject. We "think it unlikely that further inquiry will elicit new facts or arguments." We therefore recommend that the boundaries of the new Province should be those laid down in the White Paper with the addition of the Jeypore "Zemindary")

The amendment, by leave of the Committee, is withdrawn

It is moved by Mr Attlee and Mr Morgan Jones Page 29, lines 9 to 14. to leave out from ("determine") in line 9 to the end of the paragraph and to insert ("We believe that even with the creation of these new Provinces there "is a strong case for a reconsideration of Provincial boundaries, and we "recommend that the Indian Legislature should as soon as possible after the "coming into force of the new Constitution set up a Boundaries Commission "to delimit the extent of the Provinces and to decide if some should, for "greater facility in working, be divided Generally speaking, we consider "that the Provinces, however suitable as administrative units under an " autocracy, are, in many cases, too large for the efficient working of democratic "institutions for a people at the stage of development of that of many of the "inhabitants of India, although, at the same time, we recognise that a "Provincial patriotism has, in many instances, already been developed. It is "therefore, in our view, essentially a matter which should be decided by the representatives of the Indian people. We would add here a word as to the proposition which has been put before us on many occasions, namely, that no area which is not financially self-sufficient should be formed into a "Province We cannot accept this contention. It is a fact that the Indian "Provinces and various parts of them differ widely in their financial resources, "but we can see no reason why, two areas that admittedly differ in their racial " and linguistic composition, should be united in order that one of them might "bear the burden of the deficit in the other lu our view, the mere fact of "contiguity to a deficit area does not make it equitable to impose a burden "on the people of a particular Province We recognize that it is desirable "that no part of India should be seriously retarded in its progress as compared "with others by reason of its lack of resources, but we consider that the "difficulty should be got over by the grant of funds from the whole of India, "rather than that the burden of the deficit areas should be placed on particular "Provinces for purely geographical reasons")

The same is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler Page 29, lines 11 to 14, to leave out from ("purpose,") in line 11 to the end of the paragraph and to insert ("we think that the actual alteration of boundaries should be carried "out by Order in Council, but that the initiative should come from the "Provinces concerned and should receive the concurrence of the Central "Government and Legislature.")

The same is agreed to.

Paragraph 60 is again read as amended.

The further consideration of paragraph 60 is postponed.

Paragraph 61 is read

It is moved by Mr Attlee, Mr Morgan Jones and Sir John Wardlaw-Milne. Page 29, lines 20 and 21, to leave out from ("Legislature,") in line 20 to the end of the paragraph

The amendment, by leave of the Committee, is withdrawn

Paragraph 61 is again read

The further consideration of paragraph 61 is postponed

It is moved by the Marquess of Linhthgow Page 29, after paragraph 61, to insert the following new paragraph —

(' 61A If effect 15 given to our recommendations there will be in India eleven autonomous Provinces Of these the area of Bengal is approximately 78,000 square miles, and its population approximately 50,000,000 the corresponding figures for Madras are 136,000 and 45,000,000, for Bombay (excluding Sind) 77,000 and 18,000,000, for the United Provinces 106,000, and 48,000,000, for the Punjab 99,000, and 24,000,000 It is over these immense areas and populations that Indians will in future be responsible for every function of civil government in the provincial sphere The area of Great Britain is 89,000 square miles, with a population of 43,000,000, of France 212,000 square miles, with a population of 42,000,000, of Italy 120,000 square miles, with a population of 42,000,000. We make these comparisons because they illustrate the scope which will be afforded to Indian statesmen by the grant of responsible government in the provincial field, as well as the burden which in every Province will fall upon Indians in both Legislatures and Governments It is no doubt natural that the attention of political opinion in India should at the time of our enquiry be concentrated rather upon the question of responsibility at the Centre; and we think that it is therefore all the more important that we should in this place emphasise the magnitude of the constitutional advance which we contemplate in the Provinces and emphasise the extent of the opportunity thus presented to Indians to justify in the service of their respective Provinces their claim for self government")

The same is agreed to

New paragraph 61A is again read

The further consideration of paragraph 61A is postponed.

Paragraphs 62 to 67 are again read and postponed.

Paragraph 68 is again read

It is moved by Sir John Wardiaw-Milne Page 32, lines 16 and 17, to leave out from ("Country") in line 16 to ('the') in line 17

The same is agreed to

It is moved by Mr Attlee and Mr Morgan Jones Page 32, lines 18 to 25, to leave out from ("otherwise") in line 18 to the end of the paragraph

The amendment by leave of the Committee is withdrawn

Paragraph 68 is again read, as amended

The further consideration of paragraph 68 is postponed

Paragraphs 69 and 70 are again read and postponed

Paragraph 71 is again read

It is moved by the Lord Eustace Percy and the Earl of Derby Page 38, to leave out paragraph 71 and to insert the following new paragraph —

("71 We have already pointed out that, in the present Government of India Act, there is a provision which requires the Governor to be

guided by ' the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this subject The Act will commit certain matters to the Governor's sole discretion, such, for instance as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor For the rest, it will provide that the Governor shall have a Council of Ministers to aid and advise him, but his relations with his Ministers are left to be determined wholly by the Instrument We agree that it is desirable that the Governors' of Instructions special responsibilities, over and above the matters which are committed to his sole discretion, should be laid down in the Act itself rather than that they should be left to be enumerated thereafter in the Instrument of Instructions In the first place, Indian public opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to be unlimited, and, secondly, the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers before the Constitution Bill passes nnally from their control. On the other hand, we agree that it would be undesirable to seek to define the Governor's relations with his Ministers by imposing a statutory obligation upon him to be guided by their advice, since to do so would be to convert a constitutional convention into a rule of law and thus, perhaps, to bring it within the cognisance of the courts }

The same is agreed to

New paragraph 71 is again read

The further consideration of paragraph 71 is postponed.

Paragraph 72 is again read.

It is moved by the Lord Hardinge of Penshurst Page 34, lines 9 and 10, to leave out from ('numerous, ") in line 9 to the end of the sentence

The amendment by leave of the Committee is withdrawn

It is moved by Sir John Wardlaw-Milne Page 34, lines 12 to 15, to leave out from ( defined, ') in line 12 to the end of the paragraph

The amendment by leave of the Committee is withdrawn

It is moved by the Lord Hardinge of Penshurst Page 34, line 13, to have out ('unnecessary') and to insert ("undesirable")

The same is agreed to

Paragraph 72 is again read, as amended.

The further consideration of paragraph 72 is postponed

Paragraph 73 is again read.

It is moved by the Marquess of Salisbury Page 34, line 23, after development ) to insert ("But the method of submission to Parliament should secure that if either House dissent from the Instrument of Instructions or from any subsequent amendments of it, it or they should be of no effect.)

The amendment, by leave of the Committee, is withdrawn

Paragraph 73 is again read.

The further consideration of paragraph 73 is postpoucd

Paragraphs 74 and 75 are again read and postponed

Paragraph 76 is again read.

It is moved by Mr. Morgan Jones and Mr. Attlee. Page 35, line 36, to leave out ("cannot").

The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlec. Page 35, lines 36 and 37, to leave out ("these suggestions") and to insert ("the first suggestion").

The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlee. Page 35, lines 37 to 42, to leave out from ("suggestions.") in line 37 to the end of the sentence and to insert ("We feel that the special responsibilities of the Governor should "be reduced to the absolute minimum necessary, and that the provision in "the White Paper is drawn in such wide terms as to enable the Governor to "step in and overrule ministers over a very wide field. To give such wide "powers of intervention is, in our view, likely to reduce that sense of responsibility which we wish to see created in Ministers and Legislatures. We believe that the success of the Provincial Governments will be shown "just in so far as such a power does not have to be exercised, and we consider that powers given to the Governor must be adequate, but in our view they should essentially be emergency powers to be used only where a breakdown "threatens and not to be part of the ordinary operation of government.") The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlee. Pages 35 and 36, to leave out from ("draw.") in line 42, page 35, to ("With ") in line 6, page 36, and to insert ("We do not agree, however, that any action taken by the "Governor should be confined to the department of law and order This is "to fall into the mistake, which may perhaps have arisen owing to the "operation of dyarchy, in imagining that Government can be divided up "into a series of water-tight compartments.")

The same is disagreed to.

It is moved by Mr Attlee and Mr. Morgan Jones. Page 36, lines 14 to 25, to leave out from ("formula.") in line 14 to the end of line 25 and to insert ("With regard to the word 'minorities," we agree with the British Indian "Delegation in thinking that it is capable of a dangerously wide interpretation. "It may be said that the term 'minorities' has a special meaning in India" and connotes the Minority Communities such as the Muslims, the Sikhs, or the Indian Christians, and that the Governor will well understand the "scope of the phrase. We fear, however, that it may be possible for some "Governor in the future so to interpret the word as to make him feel it incumbent upon him to prevent legislation directed to the removal of "cconomic, social and religious abuses; and we therefore propose that the "words' racial and religious 'should be inserted before the word 'minorities'.") The same is disagreed to.

It is moved by the Lord Ker (M. Lothian). Page 36, line 22, after "protection" to insert ("especially in cases where, as under the proviso to "proposal 122 of the White Paper, an appeal to the Courts for redress against "legislative discrimination based on religion, descent, caste, colour or place of birth, is precluded by the Constitution.")

The amendment, by leave of the Committee, is withdrawn

It is moved by Mr. Morgan Jones and Mr. Attlee. Page 36, line 29, to leave out ("privileges guaranteed") and to insert ("privileges definitely "guaranteed to them")

The same is disagreed to.

It is moved by Mr. Morgan Jones and Mr. Attlee. Lines 30 to 41, to leave out lines 30 to 41 inclusive and to insert ("agree with this proposal").

The same is disagreed to.

Paragraph 76 is again read.

The further consideration of paragraph 76 is postponed

Paragraph 77 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 37, line 1, after ("State,") to insert ("with due regard to the established rights of either "party,").

The same is agreed to.

Paragraph 77 is again read as amended.

The further consideration of paragraph 77 is postponed.

Paragraph 78 is again read and postponed.

Paragraph 79 is again read.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 37, lines 23 to 26, to leave out from (" the ") in line 23 to (" makes") in line 26 and to insert (" Governor's responsibilities within the administered districts of his Province" and the responsibilities of the Governor-General exercised through the person " of the Governor in his other capacity as Agent-General for the Tribal Tracts" on the borders of the Province").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 37, after line 31, to insert the following new sub-paragraph:—

("But, in our opinion, the two proposals in the White Paper which have reference to special circumstances in particular Provinces do not exhaust the requirements of this kind. It has come to our notice that, under the system of joint administration of the Districts known as the Berars with the Central Provinces which has obtained for many years, and which, as we have already pointed out, will continue under the new Constitution, there has been a tendency on the part of the inhabitants of the Berars, and of their representatives in the Legislature, to criticise the apportionment between the two areas forming the joint Province as favouring unduly the Central Provinces area to the disadvantage of the Berars. We express no opinion as to the justification for such criticisms, but it is evident that, under a system of responsible government, the scope for grievances on this account may well be increased. We think, therefore, that the Governor of the joint Province should have imposed upon him a special responsibility and should thus be enabled to counteract any proposals of his Ministry which he regards as likely to give justifiable ground for complaint on this account. Without attempting to usurp the functions of the draftsman, we suggest that the purpose we have in view would be adequately expressed in defining the special responsibility in some such terms as :-

"'The expenditure in the Berars of a reasonable share of the revenues raised for the joint purposes of the Berars and the Central Provinces."

"We think, moreover, that the Governor might appropriately be directed in his Instrument of Instructions to constitute some impartial body to advise him on the principles which should be followed in the distribution of revenues if he is not satisfied that past practice affords an adequate guide for his Ministers and himself for the discharge of the special responsibility imposed upon him in respect of them.

"We also think that the special position of the Berars should be recognised by requiring the Governor, through his Instrument of Instructions, to interpret his special responsibility for 'the protection of the rights of any Indian State' as involving inter alia an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad.")

The same is agreed to.

Paragraph 79 is again read as amended.

The further consideration of paragraph 79 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. After paragraph 79, ige 37, to insert the following new paragraph:

(" 79A. We think it desirable to make some reference to the suggestion that among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Pro- fi vince following the analogy of the special responsibility of this kind, " which, as we shall explain later, we recommend should be imposed on r the Governor-General in relation to the Federatiou. A similar proposal was examined and rejected by the Statutory Commission on the ground that a power of intervention over so wide a field would hinder the growth of responsibility. We agree with this view. The other special responsihilities which we recommend will give the Governor adequate powers in relation to supply and taxation to ensure that their due discharge is not impeded by lack of financial resources; we refer specially to one aspect of this matter below. But the addition of a special financial responsibility would increase enormously the range of his special powers. There is no real parallel with the situation at the Centre where there is paramount necessity to avoid action which might prejudice the credit of India as a whole in the money markets of the world, and where so considerable a proportion of the revenues are needed for the expenditure of the reserved departments.4 The Statutory Commission point out that the Central Government, through their powers of control over Provincial Borrowing, should be able to exercise a salutary influence over Provinces. We also attach importance to this method of checking improvidence on the part of a Province, and, as we explain below, we approve, subject to one modification, the proposals in the White Paper for the regulation of Provincial Borrowing.")

The same is agreed to.

New paragraph 79A is again read.

The further consideration of paragraph 79A is postponed.

Ordered, that the Committee be adjourned to Monday next at half-past our o'clock.

<sup>&</sup>lt;sup>1</sup> Infra, paragraphs 165 and 167. Report, Vol. II, paragraph 189.
Infra, paragraphs 303-307.

Infra, paragraph 170.
Infra, paragraph 262.

# Die Lunae 25° Junii 1934

#### Present :

LORD ARCHBISHOP OF CANTERBURY. LORD CHANCELLOR. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW.
MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. VISCOUNT HALIFAX. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST.

LORD SNELL LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. ATTLEE. MR. BUTLER. MAJOR CADOGAN. Mr. Cocks. SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. FOOT. SIR SAMUEL HOARE. SIR TOSEPH NALL.

LORD EUSTACE PERCY.

SIR JOHN WARDLAW-MILNE. EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

Paragraphs 80 to 82 are again read and postponed.

Paragraph 83 is again read.

It is moved by the Lord Eustace Percy. Page 38, line 36, to leave out from the beginning of the paragraph to ("(i)") in line 42 and to insert ("We have considered various suggestions to meet this difficulty")

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Isaac Foot. Page 38, line 43, after ("fit,") to insert ("and with the "consent of the Chief Minister".)

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 39, line 9, to leave out from ("appointment.") in line 9 to the end of the paragraph and to insert ("We can see no advantage, and many disadvantages, in the "second and third of these suggestions, and the fourth is open to the grave "objection that it would infringe the Governor's prerogative. The only plan, therefore, which, in our opinion, merits consideration is the first. "We have, however, come to the conclusion that such advantages as might be anticipated from a provision in the Constitution Act enabling "the Governor to appoint to his Ministry one or more persons who are "not members of the Legislature would weigh little in the balance against "the dislike and suspicion with which such a provision would undoubtedly "be viewed almost universally in India—a dislike and suspicion so strong "that we think it unlikely that any Governor would, in fact, find it possible "to exercise such a power. We recommend, therefore, that the proposal in "the White Paper to which we have alluded should remain unchanged.")

Objected to.

All amendments are to the Draft Report (vide infra, paras. 1-12B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Fart I).

A Key is attached (vide infra, pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

On Question :--

Contents (19).

Lord Archbishop of Canterbury. Lord Chancellor. Marquess of Zetland. Marquess of Reading. Earl of Derby. €arl Peel. 'iscount Halifax. ord Ker (M. Lothian). ord Hardinge of Penshurst. ard Snell. and Hutchison of Montrose.

: Attlec. . Butler. jor Cadogan. Cocks.

Davidson. .. Foot.

Sir Samuel Hoare. Earl Winterton.

The said amendment is agreed to.

Paragraph 83 is again read as amended.

The further consideration of paragraph 83 is postponed.

Paragraph 84 is again read.

The following amendments are laid before the Committee.

The Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Isaac Foot to move. Page 39, lines 24 to 29, to leave out from ("members.") in line 24 to ("The") in line 29.

Sir John Wardlaw-Milne to move. Page 39, lines 41 and 42, to leave out (" (which we do not suggest)").

The Marquess of Reading, the Lord Ker (M. Lothian), Mr. Isaac Foot, and Sir John Wardlaw-Milne to move. Page 40, lines 1 to 4, to leave out from ("Executive.") in line I to the end of the paragraph.

The consideration of the said amendments is postponed.

It is moved by Sir Samuel Hoare, Mr. Attlee, Mr. Cocks, and the Lord Snell. Pages 39 and 40, to leave out paragraph 84.

The same is agreed to.

Paragraph 85 is again read and postponed.

Paragraphs 85 to 88 are again read.

It is moved by Sir Reginald Craddock, the Lord Middleton, Sir Joseph Nall, and the Marquess of Salisbury. Pages 40 to 42, to leave out paragraphs 85 to 88, and to insert the following new paragraph:-

("85. In accordance with the recommendations of the Statutory Commission we agree to the proposed transfer to responsible Ministers of subjects of great importance, including among others Land Revenue Administration, Finance, Irrigation, and Forests. The immense responsibilities involved in the efficient administration of these great departments cannot be denied. They are all of vital importance to the interests of the people at large, but the question of law and order stands out by itself and we approach it with a profound sense of its vital importance in the solution of the Indian Constitutional

Not Contents (9).

Marquess of Salisbury. Marquess of Linlithgow. Earl of Lytton. Lord Middleton. Lord Rankeillour. Sir Reginald Craddock. Sir Joseph Nall. Lord Eustace Percy. Sir John Wardlaw-Milne.

problem. In the first place let us say that though no doubt the careful consideration of this subject during recent years, and the discussions upon it, ought to have great weight with our judgment, yet the opinions upon it originally expressed by the various local Governments and by the Provincial Committees elected by the several legislatures to co-operate with the Statutory Commission are in our judgment of special value, because they reflect independent opinions held while the slate was clean and before any pronouncement on this subject or any plans for the reformed Constitution had been made by the Statutory Commission itself or by the Governor General or Provincial Governors or by the Secretary of State. The Commission have summarised these opinions as well as those of the local Governments and have set out the case for and against the transfer of Law and Order with scrupulous fairness in paragraphs 57 to 65 of their second volume. Though, as is well known, the Commission, not without some hesitation, reported in favour of the transfer to the new Provincial Ministers, they made certain observations commenting on these local expert opinions to which we would call attention. In paragraph 58 they write:

'In the same way there are British politicians sincerely desirous of helping India along the road indicated by the declaration of August 20th, 1917, and by the preamble of the Government of India Act, who may find great difficulty, whether from want of appreciation of Indian conditions or an innate conviction of the curative effects of self-government, in realising why it is that many experienced and disinterested administrators who are familiar with the actual situation, as well as important bodies of non-official opinion, hesitate to give their support at the present time to the proposal. It would be a great injustice to these men to dismiss their view as mere bureaucratic prejudice.'

And later on, paragraph 59, they say:

' we are bound to point out that it (hesitation to approve transfer) is a view by no means confined to the majority of British officers who are Inspectors General of Police in the various Provinces, or to others whether British or Indian in important official positions, but it has been expressly or impliedly supported by large bodies of non-official Indian opinion.'

Moreover, it is surely relevant to the issne with which we are now dealing that the recommendations of the Commission had to be made without any cognisance of the grave problem of terrorist conspiracies in Bengal; of many most serious communal riots (including the shambles of Cawnpore in 1931): of the narrow escape of the European and Anglo-Indian residents in Sholapur in May, 1930; of the dangerous Redshirt movement in the Frontier Province entailing serious military operations; of the rebellion in Burma; and of the attempts made to infect "workers and peasants" with communist doctrines. But this Committee and Parliament cannot regard all these sinister occurrences and movements as incidents to be ignored, nor would it have been possible for the Commission itself to have ignored them had they happened before their Report was presented to Parliament. In our view these later events afford ample reasons for reconsidering the proposal to transfer to the charge of inexperienced Ministers and Legislatures of unknown composition this vitally important department of Law and Justice.

"There is a further point to which we must refer before setting out our conclusions. Defence is a Reserved Subject under the White Paper and that term comprehends not merely defence against foreign aggression or tribal incursions, but the maintenance throughout the land of internal security. It is, therefore, essential that in the disturbed times of communal riots and rebellions such as that which occurred in Burma, there

must be the closest co-operation between the military and the police. Without such co-operation the troops are at a great disadvantage. They know nothing of the topography of the place in which they are called upon to assist the civil power or of the character of the mobs which they are called upon to overawe. The police have to be their eyes and ears upon all such occasions and it is all-important that the police and the troops should not in these emergencies be under divided control. But it is impossible to estimate how far this co-operation could be obtained if and when the police have come to recognise that their attitude and the support they will receive depend upon Ministers who have had no experience in difficult circomstances, and who, even if they are scrupulously fair, may be subject to popular accusations of partiality or corruption. The Statutory Commission have expressed admiration for the impartial conduct of the police, Hindus and Mohammedans alike, in the case of communal disturbances, and they have rightly attributed this faithful fulfilment of duty to the confidence of the police in their officers, of whom the majority are British. This confidence is born of the belief that the control of the police being reserved, their officers will not only support them but will themselves be supported by the Government. The change over of the control of the police to Ministers, though it may not shake the confidence of the rank and file in their British officers, may well shake the belief in the fulness of the support that the Government will give to the officers themselves, and if that belief is shaken, the disintegration of the loyalty of the police is sure, sooner or later, to follow.

"We believe that these considerations are of general application to the greater part of British India, but we gladly recognise that they will only be felt acutely in particular Provinces, being a relatively small minority of the whole, and we are aware that not only the Statutory Commission itself but many other authorities of great weight have expressed the opinion that full Provincial responsibility cannot be achieved without the transfer. On the whole, therefore, we are prepared to recommend a considerable step in that direction. But this must in our judgment be protected by certain safeguards which the Commission itself suggested and with such adjustments of precaution as have been rendered necessary by the emergence of subversive and terrorist movements since their Report was written.

"The recommendations of the Commission pre-supposed that the rest of their proposed Constitution would be accepted, that is to say that there would be a Government at the Centre not responsible to the legislature, and that there might be official Ministers in the Provinces supplementary to the responsible Governments. We admit that if it were agreed to lay aside the proposals for a Central responsible Government the risks of the transfer of Law and Order even where the Terrorist conspiracy is acute would be greatly diminished. In the same way we believe that the appointment of Councillors as part of the Provincial Governments would give greater security. It has been urged in evidence before us that in two or three Provioces Indians have already been in charge of the Home Department and have administered it with efficiency, but the point does not lie in any difference between an Indian and a European in this capacity. The position of an executive Councillor on the reserved side of Government vis-d-vis the legislature is totally different from the position of a Minister under the White Paper scheme. In the first place he acts not as an individual but in the name of the Governor in Council. The decisions he makes are issued on that authority. the second place be has been appointed by the Crown and unless he himself chooses to resign he is secure of his position for many years without any fear of bis critics in the legislature, and without being at the mercy of a violent Press agitation, or of intrigues to bring about his

resignation. He is thus in a sheltered position. The mere fact that an Indian Executive Councillor has filled this post with satisfaction offers no proof that a Minister in that position would have been equally successful. We consider therefore that the appointment, where he is required, of a nominated Councillor who may take charge of Law and Order, is of great importance. When we use the words 'where he is required' we mean until the Governor is able to satisfy Parliament that these safeguards can be dispensed with.

"We could of course limit our recommendation to the particular instances where terrorist agitation is already acute, but there are other subversive movements and dangerous possibilities, and such a limitation does not adequately cover the necessary conditions. We prefer, therefore, to put it forward in general terms and to advise that the Governor shall himself administer the police through a Councillor nominated by him, but that wherever after a reasonable time he may consider that the interests of the public peace no longer require these precautions, it shall be lawful for the Secretary of State by Order in Council, approved by both Houses of Parliament, to transfer the department to a responsible Minister. Provided that, if at any time, the Governor shall find that by reason of the transfer, the peace and tranquillity of the Province is jeopardised he may, for such time as he may think it expedient, resume such control in whole or in part.

"There is a further reason why these provisions should have effect, The organisation at present in operation against terrorism includes a vital element in the form of an Intelligence Department, both Provincial and Central. The Special Branch, as it is called, operates as a source of information, working through confidential agents. It was proved before us that this sytem is only possible where the agents consider themselves absolutely secure from any revelation of their identities. It is, of course, abundantly possible that an Indian Minister responsible to the Legislature may be as deserving of absolute confidence in this respect as any nominated Councillor, but however that may be we are fully satisfied that rightly or wrongly, none of these agents would believe it, and the evidence was overwhelming that the least suspicion that their information passed into such hands would permanently dry up the source from which it comes. We consider, therefore, that the Special Branch should be maintained under the orders of the Covernor-General in his discretion, and that any corresponding organization in the Provinces should be under its directions through the Governor in his discretion. it right to add that these difficulties which surround the Special Branch and their solution carry us back to the question of the police and supply ns with an additional cogent reason for entrusting the Governor with the power which we have already indicated of keeping them under his own control through a nominated Councillor. It has been pointed out to us upon great authority that in fighting terrorism it may be necessary not only to make secure the machinery of the Special Intelligence Branch itself, but also to provide that there shall be no obstacles to prevent the police from effectively co-operating with it.")

Objected to.

On Question:-

Contents (5).
Marquess of Salisbury.
Lord Middleton.
Lord Rankeillour.
Sir Reginald Craddock.
Sir Joseph Nall.

Not Contents (19).

Lord Chancellor.
Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl of Lytton.
Earl Peel.

Contents (5).

Not Contents (19)—continued. Viscount Halifax.

Lord Ker (M. Lothian).

Lord Hardinge of Penshurst. Lord Hutchison of Montrose.

Mr. Attlee. Mr. Butler.

Major Cadogan. Mr. Cocks.

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare. Lord Eustace Percy.

The said amendment is disagreed to.

Paragraph 85 is again read.

The further consideration of paragraph 85 is postponed.

Paragraph 86 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 40, line 38, after ("the") to insert ("general").

The same is agreed to.

Paragraph 86 is again read, as amended.

The further consideration of paragraph 86 is postponed.

Paragraph 87 is again read.

It is moved by the Lord Eustace Percy. Page 40, lines 41 to 49, to leave out from ("it") in line 41 to ("order") in line 43, and to insert ("bad no "responsibility for").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 41, lines 1 to 3, to leave out from ("and") in line 1 to the end of the sentence and to insert ("nothing "will afford Indians the opportunity of demonstrating more conclusively "their fitness to govern themselves than their action in this sphere").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 41, lines 20 to 26, to leave out from ("Minister.") in line 20 to the end of the paragraph and to insert ("If the transfer is to be made, as we think it should, it is essential that the "Force should be protected so far as possible against these risks, and we "therefore proceed to consider how this protection can be provided").

The same is agreed to.

Paragraph 87 is again read, as amended.

The further consideration of paragraph 87 is postponed.

Paragraph 88 is again read.

It is moved by the Lord Rankeillour and the Lord Hardinge of Penshurst. Page 41, line 27, at the beginning to insert ("In the first place"), and to leave out (", however,").

The same are agreed to.

It is moved by the Lord Hardinge of Penshurst. Page 41, lines 28 and 29, to leave out (" In the first place,").

The same is agreed to.

It is moved by the Lord Rankeillour and the Lord Hardinge of Penshurst. Page 41, line 42, after (" force") to insert (" or from any other cause").

The amendment, by leave of the Committee, is withdrawn.

(C 14542)

It is moved by the Lord Rankellour and the Lord Hardinge of Penshurst. Page 41, line 43, after the first (" the ") to insert (" immediate ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 88 is again read, as amended.

The further consideration of paragraph 88 is postponed till tomorrow.

Ordered, that the Committee be adjourned till tomorrow at half-past Ten o'clock.

### Die Martis 26° Junii 1934

### Present:

LORD ARCHBISHOP OF CANTERBURY.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF LINLITHGOW.

MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.

EARL PCEL.

VISCOUNT HALIFAX.

LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIE REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIE SAMUEL HOARE.
MR. MORGAN JONES.
SIE JOSEPH NALL.
LORD EUSTACE PERCY.
SIE JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 88 is again considered.

It is moved by the Lord Rankellour and the Lord Hardinge of Penshurst. Page 41, lines 44 to 47, to leave out from the first ("be") in line 44 to ("Secondly") in line 47, and to insert ("required, even to the extent of taking into his own hands the administration of any function of Government that the exigencies of the position might demand. He might indeed in "certain circumstances be confronted with the necessity for retaining such "powers in his hand at the very inception of autonomy.")

The Amendment, by leave of the Committee, is withdrawn. .

Paragraph 88 is again read as amended.

The further consideration of paragraph 88 is postponed.

Paragraph 89 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 42, line 23, to leave out ("it may well be") and to insert ("we are satisfied").

The same is agreed to.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 42, line 25, to leave out ("at least the Governor's knowledge") and to insert "(the Governor's consent").

The same is agreed to.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Page 42, lines 26 to 36, to leave out from beginning of line 26 to the end of the paragraph and to insert ("We, therefore, recommend that the Police Act of 1861 should not be subject to repeal or

All amendments are to the Draft Report (wide infra, paras. 1-42B, pp. 470-491; and wide supra paras. 43-453, pp. 64-253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (wide infra pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

(C 14542)

"alteration by the Legislaturs without the prior consent of the Governor"General, and that the Police Acts of the Governments of Bombay, Bengal,
"and Madras should be included in the category of Acts which should not be
"repealed or altered by the Provincial Legislature without the previous
"sanction of the Governor-General. And further that a schedule of the more
"important rules securing to the Inspector-General of Police control of the
"administration of the Police Force, shall be drawn up, which rules shall not
"be alterable without the consent of the Governor.")

The same is agreed to.

Paragraph 89 is again read as amended.

The further consideration of paragraph 89 is postponed.

Paragraphs 90 to 92 are again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Paragraph 90, page 43, line 6, to leave out ("police force itself") and to insert ("circle of the particular officers of the police force concerned").

The same is agreed to.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Pensburst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy. Paragraph 90, page 43, line 11, after ("reconstitute.") to insert ("The problem is a difficult one and, though, at "the moment, it is perhaps only of immediate importance in the Province of Bengal and to a lesser extent in the provinces which border on Bengal, terrorism and revoluntionary conspiracy have not been confined to those territories, nor consequently is the necessity for efficient counter-revolutionary measures limited to them. Bengal, bowever, as has been proved to us by the evidence we have received, has a particularly long and disquieting record of murder and outrage, of which Indians and Europeans have equally been the victims. It has also shown in a marked degree a rise or fall in such terrorist crime according as the hands of the authorities have been weakened or strengthened, and as precautionary and special measures "have been relaxed or enforced.")

The further consideration of the said amendment is postponed till to-morrow.

The further consideration of Paragraphs 90 to 92 is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

# Die Mercurii 27° Junii 1934

### Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.

MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

MR. ATTLEE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraphs 90 to 92 are again considered.

The motion of the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy. Paragraph 90, page 43, line 11, after ("reconstitute.") to insert ("The problem is a difficult one "and, though, at the moment, it is perhaps only of immediate importance in the Province of Bengal and to a lesser extent in the provinces which border on Bengal, terrorism and revolutionary conspiracy have not been "confined to those territories, nor consequently is the necessity for efficient counter-revolutionary measures limited to them. Bengal, however, as has been proved to us by the evidence we have received, has a particularly long and disquieting record of murder and outrage, of which Indians and Europeans have equally been the victims. It has also shown in a marked degree a rise or fall in such terrorist crime according as the hands of the "authorities have been weakened or strengthened, and as precautionary and special measures have been relaxed or enforced.") is again considered. After discussion the further consideration of the said amendment is postponed.

The following amendments to Paragraphs 90 to 92 are laid before the Committee:—

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy to move. Paragraph 91, page 43, lines 12 and 13, to leave out lines 12 and 13 inclusive.

The Lord Hutchison of Montrose to move. Paragraph 91, page 43, lines 28 and 29, to leave out from ("that") in line 28 to ("and") in line 29 and to insert ("the practice is that in a secret service case the "names of agents are not disclosed to Ministers").

All amendments are to the Draft Report (vide infra paras. 1-42B, pp. 470-491; and bide supra paras, 43-453, pp. 84-253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

(C 14542)

Sir John Wardlaw-Milne to move. Paragraph 91, page 43, line 33, to leave out from ("order,") to the end of the line and to insert ("must be understood as themselves adopting")

The Earl of Lytton to move Paragraph 91, page 43, lines 36 to 38, to leave out from the second ("agents") in line 36 to the end of the sentence and to insert ("themselves would not feel secure that their "identity might not be revealed")

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy to move Paragraph 92, pages 43 and 44 to leave out paragraph 92 and to insert the following new paragraph —

(" 92 In the circumstances set out above we are convinced that it should be made plain that the control of the organisation which exists or may hereafter exist, for the purpose of combating the terrorist movement, is in the hands of the Governor General at the centre and of the Governors in the provinces. To secure the object which we have it view, we recommend that the Central Intelligence Bureau be placed under the control of the Governor General, as part of the Political and Foreign Department, and that in any province in which a special branch of the Police force exists or may hereafter be brought into being, the Inspector-General shall take his orders direct from the Governor as the agent of the Governor General in all matters affecting the work of the special branch in whatever branch of police administration such matters We realise that in such circumstances, the Minister in charge may arise of the portfolio of Law and Order might be unwilling to answer in the Legislature for action taken on the initiative of the Governor, and in that event we recommend that it shall be open to the Governor to appoint some person selected at his discretion to act as his spokesman in the Legislature ")

The Earl of Lytton to move Paragraph 92, pages 43 and 44, to leave

out paragraph 92 and to insert the following new paragraph

("92 The existence of terrorist crime is a special disease which calls for special treatment. It necessitates departures from the ordinary law and the enactment of special legislation such as the Bengal Criminal Law Amendment Act. The Special Branch is an essential feature of the machinery for combating terrorist activities, and as such we consider that it requires special treatment. We therefore recommend that this small and exceptional service where it exists should be a reserved service responsible to the Governor alone").

Sir John Wardlaw-Milne to move Paragraph 92, page 43, line 45 after ("Province") to insert ("(who should continue to have direct

access to him) ")

Mr Attlee, Mr Cocks, Mr Morgan Jones, and the Lord Snell to move Paragraph 92, page 44, lines 10 to 13, to leave out from ("enforced", in line 10 to ("We") in line 13

The consideration of the said amendments is postponed

After discussion the further consideration of paragraphs 90 to 92 is again postponed

Paragraph 93 is again read

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst the Lord Hutchison of Montrose, Major Cadog if and the Lord Eustace Percy Page 44, lines 40 to 42, to leave out from ("notice") in line 40 to the end of the paragraph

The amendment, by leave of the Committee, is withdrawn

Paragraph 93 is again read

The further consideration of paragraph 93 is postponed

Paragraph 94 is again read

It is moved by the Earl of Derby Page 45, line 20, to leave out (" assent, express or implied, ') and to insert (" knowledge")

The same is agreed to

It is moved by the Earl of Derby. Page 45, lines 20 to 25, to leave out from ('concerned,') in line 20 to the end of the sentence.

The same is agreed to.

Paragraph 94 is again read as amended.

The further consideration of paragraph 94 is postponed.

Paragraph 95 is again read

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, and the Lord Eustace Percy Page 46, lines 20 to 23, to leave out from the beginning of line 20 to the end of the paragraph, and to insert ( We recommend, therefore, that it shall be specifically laid down in the Constitution "Act that the rules of business shall contain a provision laying upon Ministers "the duty of bringing to the notice of the Governor any matter under consideration in their Departments which involves or is likely to involve any "of his special responsibilities," and requiring Secretaries to Government "to bring to the notice of the Minister and of the Governor any matters of "the same kind")

The same is agreed to

Paragraph 95 is again read as amended

The further consideration of paragraph 95 is postponed

Paragraph 96 is again read

It is moved by the Lord Hutchison of Montrose, the Lord Hardinge of Penshurst, and Major Cadogan Page 46, line 27, after ('the') to insert ("number,"), lines 34 to 48, to leave out from ("administration,') in line 34 to the end of the paragraph

The amendments by leave of the Committee are withdrawn

Paragraph 96 is again read

The further consideration of paragraph 96 is postponed.

Paragraphs 97 and 98 are again read and postponed.

Paragraph 99 is again read

It is moved by the Lord Eustace Percy Page 48, lines 8 to 21, to leave out from ("Act") in line 8 to the end of the paragraph and to insert ("We agree that, in addition to the power of issuing emergency ordinances to which we refer later, the Governor should have this reserve power of legislation. "We agree also with the proposed change in nomenclature, since we can see no possible advantage in describing an Act as the Act of the Legislature when the Legislature has declined to enact it. But we go further We agree with the members of the British Indian Delegation in thinking it undesirable that the Governor should be required to submit a proposed Governor's Act to the Legislature before enacting it We do not, indeed, share the fear, which we understand the British Indian Delegates to entertain, that the Governor might use this procedure for the purpose of seeking support in the Legislature against his Ministers Our objection rather is that the proposed procedure will be a useless formality in the only circumstances in which a Governor's Act could reasonably be contemplated. If the obstacle to any legislation which the Governor thinks necessary to the discharge of his special responsibilities lies, not in the unwillingness of the Legislature to Pass it, but in the unwillingness of his Ministers to sponsor it, his remedy

"lies, not in a Governor's Act, but in a change of Ministry. If, on the other hand, the obstacle lies in the unwillingness of the Legislature, there can "clearly be no point in submitting the proposed legislation to it, and to do so might merely exacerbate political feeling. Since, however, there may be intermediate cases where an opportunity may usefully be given to the "Legislature for revising a hasty or unconsidered decision previously made or threatened, we think that the Governor should have the power (which we presume he would, in any case, possess) to notify the Legislature by Message of his intention, at the expiration of, say, one month, to enact a Governor's "Act, the terms of which would be set out in the Message. It would then be open to the Legislature, if it thought fit, to present an address to the Governor at any time before the expiration of the month, praying him only to enact the "proposed Act with certain amendments which he could then consider upon "their merits; or it might even think fit to revise its former decision and to "forestall the Governor by itself enacting legislation in the sense desired by "him.")

The same is agreed to.

Paragraph 99 is again read as amended.

The further consideration of paragraph 99 is postponed.

Paragraph 100 is again read.

It is moved by the Lord Eustace Percy. Page 48, to leave out paragraph 100.

The same is agreed to.

Paragraph 101 is again read.

It is moved by the Lord Eustace Percy. Page 49, to leave out from the heginning of the paragraph to ("we") in line 36.

The same is agreed to.

It is moved by Major Cadogan. Page 49, lines 36 to 40, to leave out from ("alone") in line 36 to the end of the paragraph.

The amendment by leave of the Committee is withdrawn,

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 49, lines 39 and 40, to leave out from ("We") in line 39 to the end of the paragraph and to insert ("consider that all Governor's Acts should be laid before Parliament and that the Governor, before legislating, should have the "consurvance of the Covernor Ceneral")?

The same is agreed to.

Paragraph 101 is again read as amended.

The further consideration of paragraph 101 is postponed.

Paragraph 102 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 50, line 3, to leave out (" if it should be thought") and to insert (" we agree ").

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Lines 4 and 5, to leave out from ("obtained,") in line 4 to the end of the paragraph.

The same is agreed to.

Paragraph 102 is again read as amended.

The further consideration of paragraph 102 is postponed.

· Paragraph 103 is again read and postponed.

Paragraph 104 is again read.

It is moved by the Marquess of Linlithgow. Page 50, line 44, after ("resolution") to insert ("in which case it will cease to operate forthwith"). The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Page 51, line 5, after (" respons..."). " responsibility") to insert ("but with the concurrence of the Governor-

The same is agreed to.

Paragraph 104 is again read as amended.

The further consideration of paragraph 104 is postponed.

Paragraph 105 is again read.

It is moved by the Marquess of Linlithgow on behalf of Sir Austen Chamberlain. Page 51, line 12, to leave out from ("Act,") to ("all") and to insert ("to assume to himself by Proclamation"); line 21, to leave out ("obsolete") and to insert ("unnecessary."); and line 35, to leave out ("to") and to insert (" of ").

The same are agreed to.

Paragraph 105 is again read as amended.

The further consideration of Paragraph 105 is postponed.

Paragraph 106 is again read and postponed.

Paragraphs 107 to 115 are again read.

The following amendments are laid before the Committee :-

Sir Austen Chamberlain to move. Paragraph 107, page 52, line 8, to leave out (" sense") and to insert (" measure").

Sir Austen Chamberlain to move. Paragraph 108, page 52, line 31, to leave out (" sense") and to insert (" form ").

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 109, pages 52 and 53, to leave out paragraph 109.

Sir John Wardlaw-Milne to move. Paragraph 109, page 52, line 33 to page 53, line 2, to leave out from ("lines;") in line 33, page 52, to ("that") in line 2, page 53, and to insert ("nothing in the proposed "directions of instructions should operate to prevent the growth of parties and the formation of homogeneous Ministries and we think").

Sir John Wardlaw-Milne to move. Paragraph 109, page 53, line 6, to leave out "many years to come") and to insert "a time".

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 111, page 53, lines 37 and 38, to leave out from ("Ministry,") in line 37 to ("seems") in line 38.

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 112, page 54, line 18, to leave out ("such as we have "described,").

Sir John Wardlaw-Milne to move. Paragraph 112, page 54, line 20, to leave out ("assert its authority") and to insert ("maintain its

Sir Austen Chamberlain to move. Paragraph 112, page 54, line 20, to leave out ("assert its authority") and to insert ("acquire sufficient "authority"); and line 26, to leave out ("Constitution") and to insert ("Constitutions").

The consideration of the said amendments is postponed.

It is moved by the Lord Eustace Percy, pages 52 to 57, to leave out paragraphs 107 to 115 inclusive and to insert the following new paragraphs:—

"107 In the preceding paragraphs we have approved the proposal of the White Paper to entrust certain wide discretionary powers to the Governor, and we have recommended that, in certain respects, those powers should be strengthened and extended. We should not wish to pass from this subject without some general review of the broad considerations which have led us to these conclusions. The dominant

consideration is the one which we have already emphasised the vital importance in India of a strong Executive It has seemed to us in the course of our discussions with the British Indian delegates that in their anxiety to increase the prerognitives of the Legislature, they have been apt to overlook the functions of the Executive, an attitude not perhaps surprising in those to whom at the present time the Legislature offers the main field of political activity But if the responsibility for government is henceforward to be borne by Indians themselves they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken the sense of responsibility of both The function of the Executive is to govern and to administer, that of the Legislature to vote supply. to criticize, to educate public opinion, and to legislate, and great mischief may result from attempts by the latter to invade the executive sphere The belief that parliamentary government is incompatible with a strong Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world The United Kingdom affords a sufficient proof that a strong Executive may co exist even with an omnipotent Parliament if the necessary conditions are present, and the strength of the Executive in this country may, we think, be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that the prerogatives of the Legislature are not to be jealously or factiously asserted in such a way as to prevent the Kiug's Government from being carried on "His Majesty's Opposition" is not an idle phrase, but embodies a constitutional doctrine of great significance

"108 It is a commonplace that this tradition is as yet unknown in India and that Indian Ministries have not hitherto been able to rely on the support of a disciplined party The Statutory Commission, in surveying the work of the existing Provincial Constitution observed that Governors, in choosing their Ministers have had an exceptionally difficult task. It could seldom be predicted what following a Minister would have in the Legislature, quite apart from the fact that his acceptance of office was often followed owing to personal rivalries, by the detachment of some of his previous adherents. It has been urged upon us by the members of the British Indian Delegation that these difficulties will tend to disappear under responsible government that it will be so and neither we nor the Statutory Commission would have recommended that the experiment should be made if we were not satisfied that under no other system can Indians come to appreciate the value of the tradition of which we have spoken But it must be remembered that in two respects the difficulties of Provincial Ministries in the future may be greater than in the past. In the first place, they will not in future be able to rely upon the official bloc which, in the words of the Statutory Commission has helped to decrease the instability of the balance of existing groups in the Legislature and has made the tenure of office of Ministers far less precarious. In the second place, each Ministry will, as we have already pointed out, be a composite one. The Legislatures will be based on a system of communal representation, and the Governor will be duected by his Instrument of Instructions to include in his Ministry, so far as possible, members of important minority communities A Ministry thus formed must tend to be the representative, not, as in the United Kingdom of a single majority Party or even of a coalition of Parties, but of minorities as such Moreover, the system of communal representation may also tend to render less effective the weapon to which, under most parliamentary constitutions the executive resorts when confronted by an obstructive legislature, the weapon of dissolution, for under such a system even a general election may well produce a legislature with the same complexion as its predecessor."

" 109. It is unfortunately impossible to provide against these dangers by any paper enactment regulating the relations between the Ministry and the Legislature The British Indian delegates laid great stress upon the collective responsibility of the Provincial Ministries, and in their Toint Memorandum they urged that the Instrument of Instructions should contain a definite direction to the Governor that the collective responsibility of Ministers is to be introduced forthwith This seems to us to confuse cause and effect Fbe collective responsibility of Ministers to the Legislature is not a rule of law to be put into operation at discretion, but a constitutional convention which only usage and practice can define or enforce, and, since that convention is the outcome and not the cause of Ministerial solidarity, it is as likely to be hindered as belped by artificial devices which take no account of the realities of the situation It is noticeable, for example, that, in constitutions like that of France where the principle of collective responsibility is laid down in the constitution, the effect seems to have been merely to introduce the formality of a joint resignation as a preliminary to every reconstruction of a Ministry Our attention has also been drawn to the possibility of providing that a Ministry, after receiving a vote of confidence from the Legislature on its appointment by the Governor, should remain in office for a fixed period unless previously dismissed by him. The objection to this proposal, of which there are obvious possible variants, is that the existence of a Ministry which had not, in fact, the confidence of the Legislature could, in practice, be made impossible. There is every reason why Ministries in India should refuse to treat a hostile vote, even on a demand for supply, as necessarily entailing resignation, it may even be desirable that a Ministry shoold only resign on a direct vote of no confidence, but under a system of parliamentary government there is no effective method of securing statutory permanence of tennre to a Ministry faced by a consistently hostile Legislature. All that the framers of a constitution can do in this matter is to refrain from any paper provisions which might tend indirectly to prejudice the development of a sound relationship between Ministry and Legislature We think that the wording of the Governor's Instrument of Instructions proposed in the White Paper in regard to the selection of his Ministers should be reexamined with a view to giving greater latitude to the Governor It is our earnest hope that, in the future, parties many develop in the Provincial. Legislatures which will cut across communal lines, and the proposed wording of the Instrument of Instructions as it now stands might, if literally obeyed, operate to prevent both the growth of such parties and the formation of homogeneous Ministries We recognise that nothing ought to be done at the present time which would excite suspicion or distrust in the mind of the minorities, but in this, as in other matters, we think that the course of wisdom is to give the Governor the widest possible latitude

"110 It follows from these considerations that the only way of strengthening the Provincial Executives in India is to confer adequate discretionary powers on the Governor Those powers are defined in the White Paper, we think rightly, as being the Governor's responsibilities, because it is on him that the corresponding special powers must, in the nature of things, be conferred, but the responsibilities are defined and the powers conferred, not for the purpose of superseding Ministers or enabling them to escape responsibilities which properly belong to them, but primarily in order that the executive as a whole may possess the authority which experience shows to be essential to the success of parliamentary government. To none of the Governor's special responsibilities do these considerations apply with more force than to that relating to the Public Services, for the existence of an efficient and contented civil service, immune from political interference and free

from political partialities, is the indispensable condition, not only for the effective exercise of the Governor's special powers, but also for the strength of the executive as a whole. On this subject we shall have certain further proposals to make in a later part of our Report. Nor is the case different with the Governor's extraordinary power, if the constitutional machinery should break down, to assume to himself (subject to the overriding authority of Parliament) any function of government that may appear to him necessary, even to the extent of suspending the Legislature and administering the Province without it. Like the power of dissolution, which it supplements, this power is designed to strengthen the executive as a whole. We hope, and are willing to believe, that it will never become necessary to put this power into operation; but its existence in the background, together with the whole body of the Governor's reserve powers, may well prove the most effective guarantee for the development of a genuine system of responsible government.")

The said amendment is agreed to.

New paragraphs 107 to 110 are again read.

The further consideration of paragraphs 107 to 110 is postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

# Die Veneris 29° Junii 1934

### Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF LINLITHGOW.
MARQUESS OF READINO.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAK.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday last are read.

Paragraph 116 is again read.

It is moved by the Marquess of Linlithgow. Page 57, line 26, to leave out ("not").

The same is agreed to.

Paragraph 116 is again read as amended.

The further consideration of paragraph 116 is postponed.

Paragraph 117 is again read and postponed.

Paragraph 118 is again read.

It is moved by Mr. Attlee and Mr. Cocks. Pages 57 and 58, to leave out paragraph 118 and to insert the following new paragraph:—

("118. In our view, Second Chambers, as proposed in the White Paper and composed largely of landowners and reactionary elements opposed in general to the wishes of the mass of the people, are undemocratic. We are in favour of one Chamber only. We should like, on this subject, to quote with approval the opinion of some Members of the Indian Statutory Commission.

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp. 470-491; and vide supra paras. 42-453, pp. 64-253) and NOT to the Report as published. (Vol. I, Part I).

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

"It has generally been proposed in evidence before the Joint Conference to constitute Second Chambers disproportionately representative of vested interests. They fear that such Chambers would be regarded as an undemocratic instrument of Government, and that ceaseless conflict between the two Houses would result. They think that this danger will be a real one, however the Second Chambers may be formed. Whilst a Second Chamber will not be a substitute for the Governor's powers, its existence may be used as an argument for modifying the Governor's powers before this is desirable, and it may support the Lower House against the Governor and so increase rather than prevent friction between him and the Legislature. So long as Ministers are secured in the support of the Lower House, and so obtain the funds which they require, the Second Chamber can exercise little control on the administrative side, and it is here that the influence of a Legislature is most required."

"In the Joint Memorandum submitted to us by the British Indian Delegation they pointed out that only one of their number was in favour of Second Chambers in the three Provinces of Bengal, Bihar, and the United Provinces, while another Member of the Delegation considered that only in the case of the United Provinces was a Second Chamber necessary. All the others were totally opposed to the creation of Second Chambers in Bengal, Bihar, and the United Provinces. There are two other arguments against Second Chambers which must be given due weight. The first is the additional cost on Indian revenues, which would be considerable and out of all proportion to the benefit, if any, to be gained; and the second is the drain on the personnel of the Province which would be made by creating so large a number of seats which must be filled,"

Objected to.

On Question :--

Contents (2)

Lord Snell. Mr. Attlee Not Contents (19).

Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl of Derby. Earl of Lytton. Viscount Halifax. Lord Middleton. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankeillour. Mr. Butler. Major Cadogan. Sir Reginald Craddock. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Lord Eustace Percy Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by the Loid Eustace Percy, the Earl of Derby, and Major Cadogan. Page 57, line 41, after ("Provinces.") to insert ("We see no "reason for giving an exceptional power to the Provincial Legislatures to

"amend the Constitution in this one respect, and we think that the abolition "or creation of a Legislative Council should, instead, be included among the "questions on which, as we shall later propose in our Report, a Provincial "Legislature shall have a special right to present an address to the Governor for submission to His Majesty and to Parliament".)

The same is agreed to.

It is moved by the Lord Eustace Percy, the Earl of Derby, and Major Cadogan. Page 57, line 42, to leave out ("this") and to insert ("these alterations").

The same is agreed to.

It is moved by the Lord Eustace Percy, the Earl of Derby, and Major Cadogan. Page 58, lines 2 to 9, to leave ont from ("Report<sup>2</sup>.") in line 2 to the end of the paragraph.

The same is agreed to.

Paragraph 118 is again read as amended.

The further consideration of paragraph 118 is postponed.

Paragraph 119 is read.

It is moved by the Marquess of Linlithgow on behalf of Sir Austen Chamberlain, Page 58, line 22, after ("Government") to insert ("themselves"); line 23, to leave out ("themselves").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 58, lines 32 to 35, to leave out from ('Classes.") in line 32 to ("negotiations") in line 35, and to insert ("subsequently").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Zetland. Page 58, line 36, to leave out ("the representatives of the caste Hindus and ") and to insert ("a small "group of persons claiming to speak for the Caste Hindus and certain "representatives".)

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 58, line 36, to leave out the first ("the").

The same is agreed to.

Paragraph 119 is again read as amended.

The further consideration of paragraph 119 is postponed.

Paragraph 120 is read.

It is moved by the Lord Ker (M. Lothian), the Marquess of Reading, and Mr. Foot. Page 59, lines 12 to 14, to leave out from ("Award;") in line 12 to ("be") in line 14 and to insert ("though the latter gave the Depressed "Classes electors a vote in the general constituencies as well as for the special "seats reserved for themselves; but whereas under the communal award the "Depressed Classes electors were to vote separately for the seats reserved for "them as well as jointly with other Hindus in the general constituencies, "under the Poona Pact there will now only".)

The same is agreed to.

Infra paras. 356 and 357.
 Infra, page 73.

Paragraph 120 is again read as amended.

The further consideration of paragraph 120 is postponed.

Paragraph 121 is read

It is moved by the Marquess of Zetland Page 59, to leave out paragraph 121, and to insert the following new paragraph —

(" 121 We have found ourselves in some difficulty in dealing with this aspect of the problem, owing to the declaration of the Government, referred to in paragraph 119, that they would entertain no suggestions for the alteration of their Award which had not the support of all the parties affected, and we might well have felt justified in the circumstances in holding that the matter was one which had been placed beyond our purview. This course was rendered difficult however, by the representations of those who desired to give evidence before us, as to its effect upon the development of responsible selfgovernment particularly in the Presidency of Bengal, and by deciding, as we did that such evidence was admissible, we automatically brought the matter within the scope of our enquiry The original Award was strongly criticised by more than one witness who appeared before us on the ground that it must operate inequitably in the case of Bengal, and it was urged that the disadvantage at which the caste Hindus would be placed under it would be greatly intensified as a result of the adoption of the Poona Pact Particular objection was taken to the adoption of the Poona Pact reservation of seats and the employment of separate communal electorates in a province in which the community in whose interest the reservation is made forms a majority of the population. We cannot but be impressed by the force of this contention and we think it desirable that we should set forth our views as to the purpose for which the reservation of seats and the device of separate electorates should be employed.

"The system was introduced at the time of the Minto-Morley Reforms of 1909 with a view to safeguarding the interests of minorities and in particular the Moslem Minority, and while, on general grounds, we may deplore the necessity for such a device we have reluctantly come to the conclusion that in existing circumstances in India the necessity persists We do not, therefore, propose to elaborate the objections which may be urged against the system as a whole But it is one thing to concede separate communal electorates for the purpose of giving Minorities reasonable representation in the various logislatures, it is an entirely different thing to employ the system for the purpose of conferring' upon a majority community in any particular province a permanent majority in the legislature unalterable by any appeal to the electorate. Such a course has never hitherto been adopted. It was considered and rejected by the Statutory Commission, who declared that a claim submitted to them which in Bengal and the Punjab would give to the Moslem community a fixed and unalterable majority in the general constituency seats, was one which they could not entertain, 'it would be unfair', they wrote, 'that Muhammadans should retain the very considerable weightage they now enjoy in the six provinces and that there should at the same time be imposed, in face of Hindu and Sikh Opposition, a definite Moslem majority in the Punjab and in Bengal unalterable by any appeal to the electorate. This is the position which will arise if the distribution of seats proposed in the White Paper for the Legislative Assembly of Bengal, is given effect to. The Legislative Assembly is to consist of 250 seats Of these 51 are allotted to Special interests, leaving 199 general seats. Of these general seats 119 are to be reserved for Moslems leaving 80 for the Hindus under the terms of the Poona Pact 30 of these 80 seats are to be reserved

for the so-called depressed classes, hereafter to be known as the Scheduled Castes, and the number of general seats open to the Caste Hindus is thus reduced to 50. It is probable that in the case of the 20 special interest seats which are open to Moslems and Hindus, the great majority will fall to the Hindus; but even if the Caste Hindus were to secure the whole 20 seats they would still be arbitrarily limited by Statute to 70 seats in a Legislative Assembly of 250. To restrict in this way the possible share in the government of the province, of the community which plays a predominant part in its intellectual and political life, seems to us to be both unwise and unfair. Before making our recommendations we have one further comment to make on the effect in Bengal of the Poona Pact. The object of reserving seats for the depressed classes should be in our view, to secure to the real depressed classes—that is to say the Sudras, or outcasts—a voice in the legislature. We believe that in Bengal the number of such people is small; and we fear that the result of extending the list of scheduled castes as proposed in the White Paper, will be to defeat the object in view, for it will not then be members of the real depressed classes who will be returned for the Scheduled Caste Seats, but members of the powerful Namasudra and Rajbansi Castes who experience no difficulty in getting returned to the legislature even now without any reservation of seats at all, and whose interests are as much opposed to those of the untouchables as are the interests of the highest castes themselves.

"We have now to submit our recommendations. With the Moslems in a majority in any particular province, we think that no reservation of seats for them ought to be necessary, and the logical solution of the problem would be to make no provision for a separate Moslem electorate but to throw the whole of the general seats open to Moslems and Hindus, so that candidates whether Moslems or Hindus would have to stand on their merits and make their appeal to the electors at large. We realise, however, that in this case that which is desirable is not necessarily expedient and we feel constrained to suggest a less radical alteration. We therefore, recommend as a general principle that in any province in which seats are reserved for a community which constitutes a majority of the population, a decision whether election in the case of the general seats, including those reserved for the majority community, should be by separate or by joint electorate, should rest with the minority.

"There remains the question of the Poona Pact. We need not recall the circumstances in which the so-called pact was concluded. We do not think that those who were parties to it can be said to have been accredited representatives of the caste Hindus or to have possessed any mandate to effect a settlement. We think that the arrangements for the representation of the depressed classes contained in the original award of His Majesty's Government were preferable and we recommend their adoption. In the appropriate place we give tables setting forth the distribution of seats in the legislatures in accordance with our proposals.

"Apart from the general alteration in the distribution of seats due to a return to the original Communal Award in the case of the Depressed Classes, our proposals involve some further redistribution of the seats in the case of the Legislative Assembly of Bengal and we think it desirable to explain here the reasons for the alterations which we propose. Under the proposals contained in the White Paper the Assembly in Bengal will consist of 250 members. Of these 250 seats 51 will be reserved for the representation of special interests, leaving 199 general territorial constituencies. Of these general seats 119 are to be reserved for Moslems leaving 80 only for the Hindu community including the Depressed Classes. Since the population ratio is approximately 55 per cent. Moslem and 45 per cent. Hindu it follows that so far as the general territorial

constituencies are concerned the Moslems are being given ten seats more and the Hindus ten seats less than they would be entitled to on a popula-It is true that this disparity will almost cortainly be lessened as a result of the elections to the special interest seats which will be open to Moslems and Hindus These number 20 and various estimates of the proportions of them which will be won by Moslems and Hindus respectively were submitted to us in the course of the evidence which was laid hefore us We think that the Moslems may be expected to secure six of the 20 seats which would bring their total representation up to 125 seats as compared with 94 seats in the case of the Caste Hindus and the Depressed Classes taken together But even supposing that the Moslems were to secure none of the 20 seats they would still fill 119 seats as compared with 110 which is the maximum number of seats open to the Caste Hindus and the Depressed Classes combined under the proposals of the White Paper

"We have already stated our objections to conferring upon a community by statute a definite majority unalterable by any appeal to the electorate When the relative position of the two communities in Bengal in everything except actual numbers is taken into account, it will be seen that the reasons against placing the Hindu community in a position of permanent statutory inferiority in the legislature are particularly strong. Under British rule the Hindus have played an enormously predominant part in the intellectual, the cultural, the collision of the professional and the commercial life of the professional and the professional a political, the professional and the commercial life of the province More than 64 per cent of those who are literate in Bengal are Hindus nearly 80 per cent of the students attending High Schools, nearly 83 per cent of those in Degree classes, and nearly 86 per cent of the post graduate and research students are Hindus A similar preponderance is found in the case of the professions, and in the case of Banking, Insurance and In all previous Constitutions the significance of these facts has been admitted Under the Lucknow Pact (an agreement between Moslems and Hirdus arrived at in 1916) the Moslems in Bengal were allotted no more than 40 per cent of the seats proposed to be filled by Indians by election, and under the Constitution now in force there are reserved for them only 46 per cent of the general territorial constituencies

"In the circumstances set forth above we should have felt justified, had the slate upon which we have to write been a clean one, in recommending that in Bengal all general territorial constituencies should be open to candidates of both communities without reservation of seats or separate electorates (except in the case of the 10 seats reserved for the Depressed Classes) But as we have already pointed out, the slate upon which we have to write is very far from being a clean one, and we have felt obliged to steer a middle course between the claims of the Hindus and the expectations which have been aroused in the minds of the Moslems Broadly speaking, as will be seen from an examination of the Appendix, the effect of the changes which we propose in the scheme of the White Paper will be as follows—

- (1) To give to Moslems or to Hindus, whichever is the minority community in any particular province, the right to decide whether election in the case of the general territorial constituencies shall be by separate or by joint electorates,
- (2) In the case of Bengal to allot the general territorial seats between Moslems and Hindus on a population basis, and
- (3) To give to the Depressed Classes in all provinces the representation given to them by the Government under their original Award before it was modified by the Poona Pact.

There is one other point to which we wish to refer. Under the provisions of the White Paper\* no change in the distribution of seats under the Communal Award is to be made during the first ten years during which the Constitution is in operation, and thereafter no proposals for modification will be taken into consideration which do not carry with them the assent of the communities affected. We think that it is unlikely that such assent will be given by a community entrenched in a position of statutory superiority in the legislature; and we recommend, therefore, that it should be open to either community at the expiration of ten years to petition Parliament to modify the Award.")

<sup>•</sup> Paragraph 49 of the Introduction to the White Paper.

Appendix

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4. Members of the Depressed Classes qualified to vote will vote in a general constituency. In view of the fact that for a

considerable period these classes would be unlikely, by this means alone, to secure adequate representation in the Legislature, a

number of special seats will be assigned to them as shown in the table. These seats will be filled by election from special constituencies in which only members of the depressed classes

- 1. Seats in the Legislative Assemblies in the Governor's provinces will be allocated as shown in the above table.
  - 2. Election to the seats allotted to Moslems, Europeans and Sikhs will ordinarily be by voters voting in separate communal electorates covering between them the whole area of the province, apart from any portions which may in special cases be excluded from the electoral area as backward. In any province, however, in which a Moselm or Hindu minority so desires, election in the case of the general territorial constituencies including those allotted to Moslems, shall be by joint electorates. For the purpose of the foregoing paragraph, the wishes of the minority shall be ascertained by means of a resolution moved in the legislative council prior to the coming into operation of the Constitution Act, upon which the members of the minority community will alone be permitted to vote.
    - 3. All qualified electors who are not voters either in a Moslem, Sikh, Indian Christian, Anglo-Indian or European Constituency, will be entitled to vote in a general constituency.
- depressed classes are most numerous, and that, except in Madras, they should not cover the whole area of the province.

  5. Election to seats allotted to Indian Christians, Anglo-Indians, Labour, Landholders and all other special interests shall

be as proposed in the White Paper.

constituencies should be formed in selected areas where the

to vote in a general constituency. It is intended that these

electorally qualified will be entitled to vote. Any person voting

in such a special constituency will, as stated above, be also entitled

# Objected to.

# On Question :--

Contents (9).

Marquess of Salisbury. Marquess of Zetland. Earl of Derby. Earl of Lytton. Lord Middleton. Lord Hardinge of Penshurst.

Lord Rankeillour. Sir Reginald Craddock.

Sir Joseph Nall.

Not Contents (14).

Marquess of Linlithgow. Marquess of Reading. Earl Peel.

Viscount Halifax.

Lord Ker (M. Lothian).

Mr. Attlee. Mr. Butler. Mr. Cocks.

Mr. Davidson.

Mr. Foot. Sir Samuel Hoare.

Lord Eustace Percy. Sir John Wardlaw-Milne, Earl Winterton.

The said amendment is disagreed to.

The further consideration of paragraph 121 is postponed to Friday next.

Ordered, that the Committee be adjourned to Monday next, at half-past Four o'clock

# Die Lunae 2° Julii 1984

#### Present :

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

MR. ATTLEE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The proceedings of Friday last are read.

Paragraph 121 is again considered.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Pages 59 and 60, to leave out from ("Assemblies.") in line 43, page 59, to the end of the paragraph in page 60 and to insert ("We feel somewhat differently, however, about the Poona Pact. We consider that "the original proposals of His Majesty's Government constitute a more "equitable settlement of the general communal question and one which is "more advantageous to the Depressed Classes themselves in their present "stage of development. They united the two sections of the Hindu Com-"munity by making them vote together in the general constituencies, thereby compelling candidates to consider the well-being of both sections of his "constituents when appealing for their support, while they secured to the "Depressed Classes themselves sufficient spokesmen in the legislature, elected "wholly by depressed class votes, to ensure their case being heard and to influence voting, but not so numerous that the Depressed Classes will "probably be unable to find representatives of adequate calibre with results unfortunate both to themselves and the legislatures. That solution was " altered, in a great hurry, under pressure of Mr. Candhi's 'fast unto death.' "In view of the fact that His Majesty's Government felt satisfied that the " agreement come to at Poona fell within the terms of their original announce-"ment and accepted it as a valid modification of the communal award, we "do not feel able to recommend them now to reject it.")

It is moved by the Lord Rankeillour. As an amendment to the above amendment, to leave out from ("death") in line 17 of the amendment to the end of the paragraph and to insert ("In view of "these considerations we feel obliged to recommend the Government "to reconsider the matter especially as regards Bengal.")

All amendments are to the Draft Report (vide infra, paras, 1-42B, pp. 470-491; and vide supra paras, 43-453, pp. 64-253) and NOT to the Report as published. (Vol. I, Part I).

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Objected to

On Question -

Contents (10)

Marquess of Salisbury.
Marquess of Zetland.
Earl of Derby
Earl of Lytton
Lord Middleton
Lord Hardinge of Penshurst.
Lord Rankeillour.
Lord Hutchison of Montrose.

Major Cadogan Sir Reginald Craddock. Not Contents (17)

Lord Arcbbishop of Canterbury. Marquess of Linhthgow Marquess of Reading Earl Peel Lord Ker (M. Lothian)

Lord Snell
Mr Attlee
Mr Butler

Sir Austen Chamberlain

Mr Cocks.
Mr Davidson
Mr Foot
Sir Samuel Hoare
Mr Morgan Jones
Lord Eustace Percy
Sir John Wardlaw-Milne
Earl Winterton

The said amendment to the amendment is disagreed to

It is moved by Sir Samuel Hoare and Mr Butler. As an amendment to the original amendment, at the end to insert ("But subsequently to the "arrangement of the Pact objections to it, in relation to Bengal, have been strongly urged by caste Hindus from that Province. We should welcome an agreement between the caste Hindus and Depressed Classes to reduce the number of seats reserved to the latter in Bengal, possibly with some compensatory increase in such seats in some other Provinces where a small addition in favour of the Depressed Classes would not be likely materially to affect the halance of communities in the Legislature')

The same is agreed to

The original amendment as amended is agreed to

Paragraph 121 is again read

The further consideration of paragraph 121 is postponed.

It is moved by Mr Butler and Sir Samuel Hoare After paragraph 121 to insert the following new paragraph —

"121A We have given careful consideration in this connexion to the number of seats to he allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to Labour in the new Provincial Legislatures Any material alteration in the number of seats allotted to special interests would inevitably involve a reopening of the Communal Award, and we have indicated above the objections to he seen to this But we are in any case of opinion that the representation proposed in the White Paper for landlords, commerce and industry, universities and labour, the object of which is essentially to make expert knowledge available in the legislatures and not to give any particular voting strength to individual interests, may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them We observe in particular that the representation of lahour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38, the present marked difference between the representation of labour and of commerce and industry heing thus very substantially reduced. Having regard to this, to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any

rate represent labour interests), and to the extension of the franchise, which will bring on the electoral roll large numbers of the poorer and of the labouring classes, we are of opinion that the position of labour, the importance of which we fully recognise, is adequately safeguarded under the proposals embodied in the White Paper.")

The Amendment, by leave of the Committee, is withdrawn.

Paragraph 122 is again read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 60, to leave out paragraph 122 and to insert the following new

paragraph:--

(" 122. We accept the numbers suggested in the White Paper for the Provincial Legislatures, subject to the following alterations. We can see no reason for the provision for special seats for landlords. In the Report of the Indian Statutory Commission, Volume II, Part II, Chapter 2, Section 90, the question of the special representation of landholders was exhaustively reviewed. They came to the conclusion that the landholding interests have in fact at the present time been returned for four times as many seats as were specially reserved for them, and considered that the special protection furnished to them at the present time could be safely withdrawn. We are entirely in agreement with this view. If special representation were needed it should be given not to those who by reason of their wealth and status in the community command influence and power, but to those who by reason of their poverty and low status are likely to find their claims overlooked. We are also opposed to special representation of universities. We know that the Indian Statutory Commission agreed that university seats should be preserved, but with considerable hesitation. From our own experience we find that university seats do not provide a special class of representative differing in any essential from those who find their way into legislative assemblies through general constituencies, and we, therefore, propose that these special scats should be abolished. With regard to the representation of Commerce and Industry and Planting Interests, here, again, we consider that the wealth and influence of these classes will always be sufficient to obtain for them adequate representation in the legislature. In the case of Europeans, where admittedly there may be little likelihood of their being elected from general constituencies, we recognize that, in view of the long connection of the British people with India and the special interests of Europeans, that there should be special representation for them. We believe, also, that the presence of Europeans in the Legislative Assemblies has been welcome to their Indian colleagues as bringing in an experience which has been found very valuable. We think that the representation given to Europeans should be frankly given to them as such and they should not be returned as representatives of Industry and Commerce. The abolition of these special seats will provide for an increase in the number to be allotted to the territorial constituencies and thus allow of some reduction in their area and population. This should, of course, be done with due regard to preserving the communal proportions.")

Objected to.

On Question:--

Contents (4).

Lord Snell. Mr. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (24).

Lord Archbishop of Canterbury.

Marquess of Salisbury. Marquess of Zetland.

Marquess of Linlithgow.

Marquess of Reading.

Contents (4).

Not Contents (24)-continued. Earl of Derby. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Middleton Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Lord Eustace Percy, Sir John Wardlaw-Milne.

Earl Winterton.

The said amendment is disagreed to.

It is moved by Sir Austen Chamberlain, page 60, line 20, to leave out ("nominated seats") and to insert ("seats to be filled by nomination").

The same is agreed to.

It is moved by the Lord Rankeillour and the Marquess of Zetland, page 60, line 25, at the end, to insert ("Wo have in other respects followed the scheme "already proposed for the United Provinces in preference to that suggested "for Bengal and Bihar. We think it inexpedient that so large a proportion of the Second Chamber should be chosen by the First and thereby presnimably reflect their views. We think further that the Legislative Councils "should not be dissoluble but that a third of its members should retire at "fixed intervals.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 122 is again read as amended.

The further consideration of paragraph 122 is postponed.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell, page 60, after paragraph 122, to insert the following new paragraphs:—

("122A. We consider also that there should be an increase in the number of seats reserved for Labour. It might be contended that having rejected the claims of the landholding and capitalist classes to special representation, we are not equitable in retaining special seats for Labour. The answer is the same as that applicable to the case of the depressed classes. It is necessary to give special protection to those whose economic circumstances render them hable to exploitation.

"The Indian Franchise Committee in its report stressed the importance of adequate representation of Labour in the Legislatures, pointing out that 'the force of Labour is in its numbers,' and that 'until a further lowering of the franchise secures it more wholly adequate representation in the electoral roll' special representation is necessary, and it quotes with approval the views expressed by the Royal Commission on Indian Labour 'if special electorates are to remain a feature of the Indian Constitution, there is hardly any class with so strong a claim to representation by this method as industrial labour,' and further 'If special constituencies are retained it should be recognised that Labour has not less claim to representation than employers.' With these views we are in full accord.

"The Indian Franchise Committee recommended that 38 seats should be given to Labour in the Provincial Legislative Councils as against 46 seats allocated to Commerce and Industry The White Paper has increased this disparity by adding yet another 10 to the latter. Vested interests are also reinforced in the White Paper proposals by the votes given to the landlords The Indian Franchise Committee further pointed out that 'the administration of labour legislation must for the most part be in the hands of the province, and we regard it as essential that the Provincial Legislatures should confain representatives of Labour who can watch over the provincial administration and can represent the legitimate desires and grievances of the industrial labouring class?

"We therefore consider the representation given in the White P per as quite inadequate We support the proposal of the Indian National Trade Union Conference that Labour should be given at least 10 per cent of the total number of seats

"122B We should prefer that as far as possible Labour Representation should be obtained by establishing adult suffrage in the industrial Labour and planting and the large cities Wc consider that the more developed Representation administration in those areas would be able to cope with increased electorate, while there is no reason why the franchise level should be the . same in all constituencies. In our own country there was for many years a great diversity of franchise as between urban and rural areas

"We especially desire this method because it is in our view far better that the needs of the wage earners should be brought bome to the candidates of all classes who would be affected by the existence of a labour vote than that labour representatives should be returned by constituencies of electors segregated from the rest of the community

"We recognize, however, that this method is at present only of limited application, and that pending the introduction of adult suffrage generally it is necessary to provide for special constituencies

122C Accordingly we concur with the Indian Franchise Committee's Trade Union proposals for Trade Union Constituencies as a temporary measure The recommendation was to form these constituencies in the following manner

- (a) To qualify as an electoral unit for the purpose of voting for a special Trade Union Constituency, a Union should have been registered for a minimum period of one year (in the case of the first election under the new constitution six months)
  - (b) Direct voting where the trade union is confined to one area
- (c) Where the Trade Union covers two or more centres, election to the seat or seats allotted to the trade unions in the particular province through an electoral college composed of delegates in each umon in the proportion of one for every group of one bundred voters
- (d) In the varying circumstances of individual provinces seats might, if conditions make it feasible and desirable, be allotted from among the trade umon seats to be filled by representatives of trade urnous of special importance or of specially large membership.

"122D The suggested qualifications of electors to trade union qualification constituencies should be -

of electors

- (a) Minimum age of 21 years
- (b) Paid up membership for at least six months of a registered trade union, which has itself been in existence for twelve months (in the first election under the new constitution membership three months, registration of umon six months).

"They also suggest that a candidate for a trade union constituency should be either a member, or an honorary member, or an official as defined in the Trade Unions Act, of one of the trade unions concerned, his position in any of these capacities to be not less than one year's standing.")

Objected to.

On Question :--

Contents (4).

Lord Snell, Mr. Attlee, Mr. Cocks.

Mr. Morgan Jones.

Not Contents (24).

Lord Archbishop of Canterbury. Marquess of Salisbury.

Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.

Earl of Derby.
Earl of Lytton.

Earl Peel, Viscount Halifax.

Lord Middleton. Lord Ker (M. Lothian).

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler. Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock.

Mr. Davidson. Mr. Foot.

Sir Samuel Hoare. Lord Eustace Percy. Sir John Wardlaw-Milne.

Earl Winterton.

The said amendment is disagreed to.

Paragraphs 123 and 124 are again read and postponed.

Paragraph 125 is again read.

It is moved by Sir Austen Chamberlain. Page 61, line 25, to leave out ("supplemented by") and to insert ("to which are added"); and line 25, to leave out the second ("by").

The same are agreed to.

Paragraph 125 is again read as amended.

The further consideration of paragraph 125 is postponed.

Paragraphs 126 and 127 are again read and postponed.

Paragraph 128 is again read.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 62, line 35, to leave out (" or ") and to insert (" for the detailed allocation as between trade " union and special labour constituencies of the seats allocated to Labour " and ").

The same is agreed to.

Paragraph 128 is again read as amended.

The further consideration of paragraph 128 is postponed.

Paragraph 129 is again read.

It is moved by the Lord Eustace Percy. Page 63, line 19, at the end to sert (" at the present moment')

The same is agreed to

It is moved by the Lord Eustace Percy. Page 63, line 20, to leave out in the present condition")

The same is agreed to.

It is moved by the Lord Eustace Percy Page 63, line 21, at the end to insert ('We do not bowever, desire to be undirected as reporting against the introduction of some system of indirect election in the future. The considerations which we have advanced against its adoption at the present moment may lose much of their force as social conditions change, and as institutions of local self-government develop in the Provinces. The problem is essentially one which Indians must consider for themselves, and on which we feel sure that Parliament will be ready to listen with the utmost attention to any recommendations which may be made to it by Provincial Legislatures')

The same is agreed to

Paragraph 129 is again read as amended

The further consideration of paragraph 129 is postponed

Paragraph 130 is again read

It is moved by Mr Attlee, Mr Cocks, Mr Morgan Jones, and the Lord Snell. Page 63, lines 22 to 24, to leave out from the beginning of the paragraph to the end of the first sentence and to insert

("We are bound to accept the evidence which has been brought before us that at the present time administrative reasons forbid the introduction of adult franchise generally. We, therefore, accept the proposals in the White Paper, subject to what has been stated above with regard to labour representation and to the modifications which we indicate below with regard to the franchise for male voters. We consider that the constitution, should provide definitely for the introduction of adult franchise in the provinces. Power should be given to any Provincial Legislature to widen, but not to narrow the franchise. It should be provided that adult franchise should be in force in all provinces at the general election next following the expiry of ten years from the date of the inauguration of the new provincial constitution.")

Objected to

On Question —

Contents (4).

Lord Snell. Mr. Attlee Mr. Cocks

Mr Morgan Jones.

Not Contents (22).

Lord Archbishop of Canterbury.
Marquess of Sahsbury
Marquess of Zetland
Marquess of Linhitbgow.
Marquess of Reading.
Earl of Derby
Earl Peel
Viscount Halifax
Lord Middleton
Lord Ker (M. Lothian).
Lord Hardinge of Penshurst.
Lord Rankeillour
Lord Hutchison of Montrose.
Mr. Butler
Major Cadogan.

Contents (4).

Not Contents (22)—continued.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

The said Amendment is disagreed to.

Paragraph 130 is again read.

The further consideration of paragraph 130 is postponed.

Paragraph 131 is again read and postponed.

Paragraph 132 is again read.

It is moved by the Lord Rankeillour. Page 65, lines 14 to 18, to leave out from the beginning of line 14 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 65, line 18, after ("suttee,") to insert ("The development of "social consciousness among the women of India is phenomenal, and as far "as we can ascertain has not been equalled by any other women's political "movement in any other part of the world. The development is the more "remarkable considering the impediments which such a movement has had "to encounter. Nothing could be more disastrous at this juncture than to "create the impression among the women of India that the proposed new "constitution treated of persons of less equal citizenship.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Austen Chamberlain. Page 65, line 26, to leave out from the beginning of line 26 to the end of the sentence and to insert ("which can be adduced in favour of it").

The same is agreed to.

Paragraph 132 is again read as amended.

The further consideration of paragraph 132 is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock.

# Die Martis 3° Julii 1934.

### Present :

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. VISCOUNT HALIFAX. LORD MIDDLETON. LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST. LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN. Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE. Mr. Morgan Jones. LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 133 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 65, lines 41 to 43, to leave out from ("with") in line 41 to ("(2)") in line 43 and to insert (" altogether ").

Objected to.

On Question:-

Contents (3),

Lord Snell. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (21).

Lord Archbishop of Canterbury. Marquess of Zetland. Marquess of Linlithgow, Marquess of Reading. Earl of Derby. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Middleton. Lord Ker (M. Lothian), Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock,

Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Lord Eustace Percy.

The said amendment is disagreed to.

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part I.)

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

(C 14542)

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell. Page 65, line 42, after ("husband's") to insert ('or late husband's")

The same is disagreed to

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 65, lines 42 and 43, to leave out from ('property') in line 42 to ('', (2)'') in line 43

The same is disagreed to

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 65, hine 43, to page 66, hine 10, to leave out from ("Provincis,") in line 43, page 65, to the end of the paragraph in page 66 and to insert the following new sub-division

"(2) That a literacy qualification should be substituted for the educational standard qualification, and (3) That the wives, pensioned widows, and mothers of Indian officers, non commissioned officers and soldiers should be enfranchised, (4) That the wife of a man who is qualified as an elector under the new constitution shall be entitled to a vote. We are aware that this will mean a hig addition to the electorate, but we are persuaded that it would be unfortunate if a big addition to the male electorate were made now without a corresponding increase in the women's vote. Delay now would only mean an increase later, which would have an unsettling effect on the political situation in the provinces")

Objected to

On Question -

Contents (3)

Lord Snell Mr Cocks Mr Morgan Jones Not Contents (21)

Lord Archbishop of Canterbury. Marquess of Zetland Marquess of Linlithgow. Marquess of Reading Earl of Derby Earl of Lytton Earl Peel Viacount Halifax Lord Middleton Lord Ker (M Lothian) Lord Hardinge of Penshurst Lo. 4 Rankeillour Lord Hutchison of Montrose. Mr Butler Major Cadogan Sir Austen Chamberlain Sir Reginald Craddo.k Mr Davidson Mr Foot Six Samuel Hoare Lord Eustace Percy

The said amendment is disagreed to

It is moved by Mr. Cocks, Mr Morgan Jones, and the Lord Snell Page 65, lines 44 and 45, to leave out from the beginning of line 14 to ('a'') in line 45. The same is disagreed to

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 65, lines 46 and 47, to leave out from ("that") in line 46 to the third ("the") in line 47.

The same is disagreed to.

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 66, hine 6, after ("application") to insert ("personally or by letter or ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell. Page 66, line 6, after ('husband'') to insert ('personally or by letter'')

The amendment, by leave of the Committee, is withdrawn

Paragraph 133 is again read

The further consideration of paragraph 133 is postponed.

Paragraph 134 is again read

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 66, line 27, to leave out ("women") and to insert ("wives or widows")

The amendment, by leave of the Committee, is withdrawn

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell. Page 66, lines 28 and 29, to leave out from ("property,") in line 28 to ("with") in line 29 and to insert ("before the second election under the new constitution")

Objected to

On Question -

Contents (8).

Lord Archbishop of Canterbury.
Marquess of Reading
Lord Ker (M Lothian).
Lord Snell
Lord Hutchison of Montrose

Mr Cocks Mr Foot

Mr Morgan Jones.

Not Contents (17)

Marquess of Zetland
Marquess of Linhthgow.
Earl of Derby
Earl of Lytton
Earl Peel
Viscount Hahfax
Lord Middleton
Lord Hardinge of Penshurst.
Lord Rankeillour.
Mr Butler
Major Cadogan

Sir Austen Chamberlain Sir Reginald Craddock. Mr Davidson

Sir Samuel Hoare Lord Eustace Percy. Sir John Wardlaw-Milne.

The said amendment is disagreed to

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell, line 32, to leave out ("not later than") and to insert (" before ").

The same is agreed to

Paragraph 134 is again read as amended

The further consideration of paragraph 134 is postponed.

Paragraph 135 is again read.

The following amendment is laid before the Committee.

Mr Attlee, Mr Cocks, Mr Morgan Jones, and the Lord Snell to move Page 66, lines 44 to 49, to leave out from the beginning of line 44 to the end of the paragraph and to insert ("For these and other reasons we "endorse the recommendation of the Franchise Committee").

The consideration of the said amendment is postponed.

It is moved by the Lord Eustace Percy Page 66, lines 44 to 49, to leave out lines 44 to 49 inclusive, and to insert ("We think this objection has considerable force. It may be impossible at the present moment for some

"Provinces to adopt, as some other Provinces propose to do, so low a standard "as the completion of the fourth class of the primary school, or even the "leaving examination of a middle school, partly owing to lack of records "and partly owing to the number of persons who would thus be enfranchised." But we think that it should be open to the Provincial Government to "prescribe at least any middle school certificate as the qualification for the "suffrage.")

The same is agreed to.

Paragraph 135 is again read as nmended.

The further consideration of paragraph 135 is postponed.

Paragraphs 136 and 137 are again read and postponed.

Paragraph 138 is again read.

It is moved by the Lord Ker (M. Lothian). Page 68, line 10, to leave out from ("ordinance") to the end of the paragraph.

The same is agreed to.

Paragraph 138 is again read as amended.

The further consideration of paragraph 138 is postponed.

Paragraphs 139 and 140 are again read and postponed,

Paragraph 141 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 69, line 15, after ("reasonable1") to insert ("so far as the Excluded Areas proper are concerned." We think, however, that a distinction might well be drawn in this respect "between Excluded Areas and Partially Excluded Areas, and that the application of Acts to, or the framing of Regulations for, Partially Excluded Areas is an operation which might appropriately be performed by the "Governor acting on the advice of his Ministers, the decisions taken in each "case being, of course, subject to the Governor's special responsibility for "Excluded Areas, that is to say, being subject to his right to differ from the "proposals of his Ministers if he thinks fit.")

The same is agreed to.

Paragraph 141 is again read as amended.

The further consideration of paragraph 141 is postponed.

Paragraph 142 is again read and postponed.

Paragraph 143 is again read.

It is moved by the Lord Rankeillour, the Marquess of Zetland, and Sir Austen Chamberlain. Page 69, line 45, at end to insert ("It must however "be made clear that like powers of borrowing and transfer (or 'virement') "which are found in Appropriation Acts at home are at the disposal of the "Government").

The amendment, hy leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 69, line 45, at the end to insert ("We assume, of course, that, as at present the governments" in India will, within limits, continue to possess powers of 'virement' or "re-appropriation").

The same is agreed to.

Paragraph 143 is again read as amended.

The further consideration of paragraph 143 is postponed.

Paragraphs 144 to 146 are again read and postponed.

White Paper, Proposal 108.

Paragraph 147 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks and the Lord Snell. Page 71, line 35, to leave out ("that") and to insert)" we are of the opinion "that in the case of Money Bills the Upper Chamber shall have no power of "amendment, delay or rejection. Moreover in other matters").

Objected to.

On Question :-

Contents (3).

Lord Snell.

Mr. Cocks.

Mr. Morgan Jones.

Not Contents (19).

Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl of Lytton.
Earl Peel.
Lord Middleton.
Lord Ker (M. Lothian).
Lord Hardinge of Penshurst.
Lord Rankeillour.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan,
Sir Austen Chamberlain.
Sir Reginald Craddock,

Sir Reginald Craddock, Mr. Davidson, Sir Samuel Hoare.

Lord Eustace Percy. Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 72, lines 2 to 10, to leave out from ("We") in line 2 to ("The") in line 10 and to insert ("accept this solution").

The same is disagreed to.

It is moved by the Lord Rankeillour and the Lord Eustace Percy. Page 72, 'inca 5 to 7, to heave out from "(' 'heast,'") in 'ince 5 to 'the end of the sentence. The same is agreed to.

It is moved by the Lord Rankeillour and the Lord Eustace Percy. Page 72, line 12, after ("responsibilities,") to insert ("or with the necessary financing "of the Provincial Administration,").

The same is agreed to.

Paragraph 147 is again read as amended.

The further consideration of paragraph 147 is postponed.

The Appendix (I) is again read and postponed.

Paragraph 148 is again read.

It is moved by the Lord Eustace Percy. Page 74, lines 5 to 29, to leave out from ("united.") in line 5, to the end of the paragraph and to insert: ("We have already given our reasons for approving this proposal in principle and have pointed out that it involves two distinct operations, the one a necessary consequence of the grant of Provincial Autonomy to British India, the other the establishment of a new relationship between British India and the Indian States. It only remains for us to consider the method by which each of these two operations is to be carried out.")

The same is agreed to.

(C 14542)

Paragraph 148 is again read, as amended The further consideration of paragraph 148 is postponed

Paragraph 149 is again read and postponed

Paragraph 150 is again read

It is moved by the Lord Eustace Percy Page 75, line 21, to leave out (" and Indian States")

The same is agreed to

It is moved by the Lord Eustace Percy Page 75 line 36, to page 76, line 11, to leave out from the beginning of line 36, page 75, to the end of the paragraph, page 76

The same is agreed to

Paragraph 150 is again read as amended

The further consideration of paragraph 150 is postponed

It is moved by the I ord Eustace Percy Page 76, after paragraph 150 to

insert the following new paragraph -

( 150A The rights authority and jurisdiction which will thus be conferred by the Crown on the new Central Government will not extend to any Indian State. It follows that the accession of an Indian State to the Federation cannot take place oth, wise than by the voluntary act of its Ruler. The Constitution Act cannot itself make any Indian State a member of the Federation, it will only prescribe a method whereby the State may accede and the legal consequences which will flow from the accession. There can be no question of compulsion so far as the States are concerned. Their Rulers can enter or stand aside from the Federation as they think fit. They have anounced their willingness to consider federation with the Provinces of British India on certain terms, but whereas the powers of the new Central Government in relation to the Province, the Princes have intimated that they are not prepared to agree to the exercise by a Federal Government for the purpose of the Federation of a similar range of powers in relation to themselves.)

The same is agreed to.

New paragraph 150A is again read The further consideration of paragraph 150A is postponed

Paragraph 151 is again read
It is moved by the Lord Eustace Percy. Page 76, to leave out paragraph 151.

The same is agreed to

Paragraph 152 is again read and postponed.

Paragraph 153 is again read

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 77, lines 26 to 34, to leave out from ("Crown') in line 26 to ("We") in line 34 and to insert ("We recognise that there may be some exceptions due to Treaty "rights and special privileges, but we consider that there must be a definite "minimum laid down and that as far as possible all States should come in "on the same terms")

The amendment, by leave of the Committee, is withdrawn

It is moved by the Lord Ker (M Lothian) Page 77, line 34, after ("course') to insert ("We consider that one of the essential conditions of "Federation should be that States adhering to the Federation, like the "provinces, should accept the principle of internal freedom for trade in India

"and that the Federal government alone should have the power to impose tariffs and other restrictions on trade. In cases where States already impose customs duties at their borders the condition of accession should be that no addition to such duties should be made, the question of the conditions on which they shall be reduced or abolished being left to subsequent negotiation between the State in question and the Federal government.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 153 is again read.

. The further consideration of paragraph 153 is postponed.

Paragraph 154 is again read.

It is moved hy Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 77, line 40 to page 78, line 12, to leave out from the beginning of the paragraph, page 77, to ("We") in line 12, page 78, and to insert ("The White Paper "suggests that a Federation which comprised the Provinces and only a small "number of the States would hardly be deserving of the name. We are unable "number of the States would hardly be deserving of the name. We are unable to agree. We consider that the forces making for Federation are so strong "that it is certain that before long a majority of the States, in numbers and population, will accede. At the same time, it is possible that there might be some hesitation at the heginning and we see no reason why the rest of India should wait for a certain number of Rulers of States to change their opinions before enjoying responsibility at the Centre. We would prefer that the Federation should start with a very large proportion of the Indian "States included in it, but we believe that in any event a start should be "made and that it should be possible to build up a Federation by a gradual accretion of States. It is for this reason, among others, that we desire that the conditions of accession should be uniform, and also, as we shall indicate later, that there should be a definite basis of representation for "States adhering.")

The same is disagreed to.

It is moved by the Lord Hardinge of Penshurst. Page 77, line 47, to leave out ("half") and to insert ("two-thirds").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 78, lines 12 to 14, to have out from ("here") in line 12 to ("but") in line 14 and to insert ("We consider that the time lag which may be necessary between "the establishment of autonomy in the Provinces and the establishment of "the Federation should not be longer than is absolutely dictated by "administrative necessity.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 78, bne 14, to leave out ("but") and to insert ("and")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 78, lines 14 and 15, to leave out ("desirable, if not").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 154 is again read.

The further consideration of paragraph 154 is postponed.

Paragraph 155 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 78, ne 17, to page 79, line 1, to leave out from the beginning of line 17, page 78, o ("principle") in lino 1, page 79, and to insert:—

("We agree with the proposal in the White Paper, that there "must be a legal differentiation of functions between the Representative

Infra, para 268

(C 14542)

"of the Crown in his capacity as Governor-General of the Federation "and as representing the Sovereign in his relationship with the States not "adhering to the Federation and to all States in respect of the rights of "the Crown outside the sphere of the Federation. We consider that it "would be convenient if in his first capacity the King's representative "were styled Governor-General and in his second Viceroy. We agree " with the ").

The amendment, hy leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy, and Major Cadogan. Page 78, line 35, to page 79, line 4, to leave out from (" proposal,") in line 35, page 78, to the end of the paragraph on page 79.

The amendment, hy leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 78, lines 37 to 39, to leave out from (" future; ") in line 37 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milne. Page 78, lines 39 to 45, to leave out from ("purpose,") in line 39 to ("made") in line 45 and to insert ("The "suggestion").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 78, lines 39 and 40, to leave out from (" that ") in line 39 to the first (" the ") in line 40.

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 78, line 41, to leave out from (" and ") to (" We ") and to insert (" this being so ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 155 is again read.

The further consideration of paragraph 155 is postponed.

Paragraphs 156 to 158 are again read and postponed.

Paragraph 159 is again read.

It is moved by the Marquess of Zetland. Page 80, line 20, to leave out from ("We") to ("force") and to insert ("appreciate, moreover, the").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 80, lines 33 to 35, to leave out from ("contribution") in line 33 to ("to") in line 35.

The amendment by leave of the Committee is withdrawn.

Paragraph 159 is again read as amended.

The further consideration of paragraph 159 is postponed,

Paragraph 160 is again read.

It is moved by the Lord Eustace Percy. Page 81, line 3, after "Legislature.1") to insert ("We have already given our reasons for accepting, " in principle, the proposal of the White Paper that the Federal Government "should be in some measure responsible to the Federal Legislature, but that this responsibility should not extend to all Federal subjects. This being "accepted.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 81, line 15, to leave out the second (" the ") and to insert (" certain ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 81, line 20, at the end to insert ("Before doing this, however, we think it is

<sup>1</sup> White Paper, Proposals 6-55.

"necessary to point out that responsibility may take many forms. We believe "that any attempt to try to create responsibility at the Centre by an exact reproduction of the machinery which functions at Westminster would be doomed to failure In the first place the system of responsible government ' as we know it in this country depends on stable divisions on Party lines "and, generally speaking, functions satisfactorily where there are only two main Parties These Parties should not be the creation of groups formed ' hy Members of the Legislature subsequent to their election, but should "represent real divisions of opinion which extend back to the constituencies "In the Federal Legislature, apart from the communal cleavages which already make the working of the British system difficult in many Provinces. there is to be a sharp division of the Legislature into two categories of members, one of elected representatives from British India, the other of nominees of the Rulers of States It seems difficult, therefore, to envisage the emergence of Parties on the lines familiar to us in this country Two further obstacles present themselves The first is that, owing to the nature of the Federation, the Members of the Legislature will not be equally concerned in its territory, and that the jurisdiction of the Federation will ' not extend as to all subjects equally over that territory, while the other is ' that the subject-matter of Central administration and legislation provides a " rather slender basis for a full parliamentary system. We realise that 90 per cent of everything that concerns the ordinary citizen comes within the ambit of the Provincial administration. For these reasons we consider that 'responsibility at the Contro will be developed on lines very different from those obtaining at Westminster We think that it is not always realised. in India that the British Cabinet is in fact the master of the Legislature This is a result of the Party system, for the Cabinet, though formally selected by the Crown is really composed of the leading members of the Party in a majority It maintains its power largely through the discipline of the Party machine hacked by the power of dissolution. We think that "this power of the Ministry to control the Legislature will not be reproduced "at Delhi, indeed, we think that the Ministry will be far more the servant of the Legislature than its master Under these circumstances, we think that the real responsibility will be rather with the Members of the Legislature than with the Ministers, that is to say, that the Members of the Legislature will have to take full responsibility for their actions. We do not think that the practice, whereby a Ministry is dependent from day to day on a vote of the Legislature during a Session, is workable in India We suggest proposals, which will give what is essential-greater stability to the administration")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 160 is again read as amended

The further consideration of paragraph 160 is postponed.

Paragraph 161 is again read and postponed

Paragraph 162 is again read.

It is moved by Sir Samuel Hoarc and Mr Butler Page 82, line 38, after 'external affairs') to insert reference to a footnote, and to insert the illowing as a footnote—

('3 This term does not, of course, include relations with the Indian States in matters in which they have not agreed to federate, such matters will be dealt with personally by the Viceroy as representative of the Crown. It follows from this that any State matter which a Ruler has not accepted as federal in the case of his State will not be subject to discussion in the Federal, or a Provincial, Legislature, unless the Governor-General, or the Governor, considers that British Indian interests are affected.)

The same is agreed to

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Paragraph 162 is again read as amended The further consideration of paragraph 162 is postponed.

Paragraphs 163 to 165 are again read and postponed.

Paragraph 166 is read.

It is moved by Mr. Morgan Jones and Mr Cocks Page 84, to leave out

paragraph 166 and to insert the following new paragraph

(" 166. We do not wish to repeat here what we have already said with regard to special responsibilities We consider that the White Paper proposals in regard to the Governor-General are open to the same objection as those suggested in the case of the Provincial Governors and we make the same recommendations for modification. In addition we do not think it necessary that the Governor General should have a special responsibility for safeguarding the financial stability and credit of the Federation It is, in our view, useless to give power and responsibility on the one hand and take it away with the other If Indian representatives are not capable of conducting on sound lines the finances of the Federation, they are not capable of self government ")

Objected to.

On Question:---

Contents (2).

Mr Cocks. Mr Morgan Jones Not Contents (20)

Lord Archbishop of Canterbury, Marquess of Salisbury Marquess of Zetland Marquess of Linlithgow, Marquess of Reading Earl Peel Viscount Halifax Lord Ker (M. Lothian) Lord Hardinge of Penshurst Lord Rankeillour Lord Hutchison of Montrose. Mr Butler Major Cadogan Sir Austen Chamberlain Sir Reginald Craddock Mr Davidson Sir Samuel Hoare Lord Eustace Percy Sir John Wardlaw-Milne. Earl Winterton

The said amendment is disagreed to

It is moved by the Lord Eustace Percy

Page 84, lines 16 to 20, leave out from ("sphere,") in line 16 to the end of the paragraph

The same is agreed to

Paragraph 166 is again read as amended

The further consideration of paragraph 166 is postponed.

Paragraph 167 is again read.

It is moved by Mr Morgan Jones, Mr Cocks, and the Lord Snell. Page 84, to leave out paragraph 167

The amendment, by leave of the Committee, is withdrawn

Paragraph 167 is again read and postponed.

Paragraph 168 is read.

It is moved by the Lord Eustace Percy. Page 85, line 30, after ("only.") to insert (", his action in the second capacity being untouched in any way "by the Constitution Act").

The same is agreed to.

Paragraph 168 is again read as amended.

The further consideration of paragraph 168 is postponed.

Paragraph 169 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Pages 85 and 86, to leave out paragraph 169.

The same is agreed to.

Paragraph 170 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 86, line 11, after ("Ecclesiastical Affairs (1)") to insert ("For reasons which we "propose to state we disagree with the proposal that the two latter Departments should be reserved. We agree that Defence must for some years be "a Reserved subject.")

The same is disagreed to.

The further consideration of paragraph 170 is postponed till to-morrow.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

<sup>1</sup> White Paper, Proposal 11. It is also proposed that the Governor-General shall himself direct and control the administration of British Baluchistan (White Paper, Proposal 5); but there will not be a Reserved Department of British Baluchistan, which will be a chief Commissioner's Province and will be in no different position from other Chief Commissioners' Provinces, except that Ministers will not advise the Governor-General in relation to its administration.

## Die Mercurii 4° Julii 1934.

## Present

MARQUESS OF SAILSBURY
MARQUESS OF ZETLIND
MARQUESS OF LINITHGOW.
MARQUESS OF RLADING
EARL OF DERBY
VISCOUNT HALIFAX
LORD MIDDLETON
LORD KER (M. LOTHIAN)
LORD HARDINGE OF PENSHURST
LORD SNELL
LORD RANKEILLOUR

LORD HUTCHISON OF MONTROSE

MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN
WR COCKS
SIR REGINALD CRADDOCK
MR DAVIDSON
MR FOOT
SIR SAMUEL HOARE
MR MORGAN JONES
LORD EUSTACE PERCY
SIR JOHN WARDLAW-MILNE.

EARL WINTERFON

MR Burler

THE MARQUESS OF LINLITHGOW IN the Chair

The Order of Adjournment is read

The Proceedings of yesterday are read.

Paragraph 170 is again considered.

It is moved by Mr Morgan Jones, Mr Cocks, and the Lord Snell Page 86, lines 19-23, to leave out from ("Council") in line 19 to ("and") in line 23, and to insert ('We consider that these Counsellors should form "part of a unified Ministry')

The same is disagreed to

Paragraph 170 is again read

The further consideration of paragraph 170 is postponed

Paragraph 171 is again read

It is moved by Mr Morgan Jones, Mr Cocks, and the Lord Snell. Page 86, line 33, to leave out from ("India") in line 33 to the end of the paragraph and to invert ("We recognize the serious constitutional issue raised by the existence of the Indian Defence Problem and the v ay in which it is met at the present time by the Army in India. So long as British ' troops are employed in India, whether for external defence or for internal 'security, it is, in our view, impossible to bring them under the orders of a 
'responsible Minister' The Indian Statutory Commission examined the 
'whole constitutional position created by the existence of the Indian Army "at great length, and they recognized that it was a formidable obstacle to the development of complete self government. We believe that Indian "public opinion is extremely sensitive on this point, but that the majority "of the leading statesmen recognize the hard facts of the situation "the same time, we believe that it is essential that the Constitution should "contain provisions for the bringing to an end of an anomalous position "We consider that there should be a definite programme of Indianization with a time-limit of thirty years. It may be urged that it is impossible to lay down an exact period within which an Indianization would be "capable of the defence of India There may be truth in this, but we consider "that it is necessary, if the work of Indianization is to be pushed forward "with the greatest possible energy, that there should be a clearly marked "time by which the goal is to be attained From a study of such reports "and documents as have been available to us, we believe that this could be "successfully accomplished in a period of twenty-five years. We suggest that that period should be aimed at but that a maximum of thirty years should " be fixed which must not be exceeded "

## White Paper, Proposal 12

All amendments are to the Draft Report (wds inf/a, paras 1-42B, pp 470-491, and oids supra paras 43-453, pp 64-253) and NOT to the Report as published (Vol 1, Part I)

A Key is attached (see pp 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

"At the same time, we are impressed with the very large proportion of "her revenues which India spends on Defence. We do not suggest that this "is in excess of the amount needed to maintain sufficient forces for the "requirements of India, and we are aware that a recent agreement on the "subject of the capitation payments has resulted in an advantage of a "million pounds a year in India's favour, but we consider that, as compared "with other parts of the Empire outside the United Kingdom, India has for "years borne, and is still bearing, an undue expense. It may be urged that "India's defence by sea is provided by Great Britain, but her danger from the sea is a potential rather than an actual menace. India possesses in "the North-West Frontier the one land frontier in the whole of the British "Commonwealth which not only borders on areas which are frequently "liable to be disturbed, but is exposed to the possibility of invasion by a "hostile power. While we recognise the vital necessity of the safe-keeping " of this frontier in the interest of India herself, we cannot but recognize "that the menace to that barrier may well result, not from anything which "India herself does, but from the mere fact of her being a Member of the "British Commonwealth. We therefore consider that the whole question of "Imperial Defence and the responsibilities of the various Members of the "British Commonwealth should be reviewed at an early date in order that "it may be considered as to how far the burden now borne by India is equitable. "While we agree that Desence must continue to be a reserved subject, we " are strongly impressed with the need for building up an informed opinion "on Defence matters, and we therefore propose that there should be a "Standing Defence Committee of the Legislature.")

Objected to.

On Question:-

Contents (3).

Lord Snell. Mr. Cocks. Mr. Morgan Jones. Not Contents (21).

Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl of Derby, Viscount Halifax. Lord Middleton. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Lord Eustace Percy. Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

Paragraph 171 is again read.

The further consideration of paragraph 171 is postponed.

Paragraph 172 is again read.

It is moved by the Lord Eustace Percy. Page 87, lines 16 to 18, to leave out from (" and ") in line 16 to (" that ") in line 18, and to insert (" if this be

"granted, some form of dyarchy, with all its admitted disadvantages is, as "we have already pointed out, inevitable; but the form adopted must be

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 87, line 19, to leave out (" should ") and to insert (" will ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 87, line 20, to leave out (" should ") and to insert (" will ").

The same is agreed to.

Paragraph 172 is again read as amended.

The further consideration of paragraph 172 is postponed.

Paragraph 173 is again read.

It is moved by the Lord Eustace Percy. Page 88, line 13, to leave out (" and ") and after (" prevail ") to insert (" and he must have adequate means of giving effect to them ").

The same is agreed to.

Paragraph 173 is again read as amended.

The further consideration of paragraph 173 is postponed.

Paragraph 174 is again read.

It is moved by the Lord Eustace Percy. Page 88, lines 14 to 22, to leave out from the beginning of the paragraph to ("The") in line 22, and to insert ("In order to secure the effective co-operation of the other departments of "government. Federal or Programs." government, Federal or Provincial, and thus to render unnecessary any "recourse to the Governor-General's special powers in ordinary matters of "administration, it may be well to establish some permanent co-ordinating " machinery.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 88 lines 22 to 32 to leave out from ("desirable.") in line 22, to the end of the paragraph and to insert ("We are strongly impressed with the need for "building up an informed opinion on Defence matters, and we therefore "propose that there should be established a Standing Defence Committee of " the Legislature.")

The same is disagreed to.

Paragraph 174 is again read.

The further consideration of paragraph 174 is postponed.

Paragraph 175 is again read.

It is moved by Mr. Morgan Jones, Mr Cocks, and the Lord Snell. Page 89. lines 3 to 21, to leave out from ("post.") in line 3 to the end of the paragraph and to insert ("Bearing in mind the very large proportion of her revenues "which India spends on Defence we concur with the second and third " proposals.")

The same is disagreed to.

Paragraph 175 is again read.

The further consideration of paragraph 175 is postponed.

It is moved by the Earl Winterton. Page 89, after paragraph 175, to insert the following new paragraph:-

(" 175A. In illustration of the principle that the Governor-General should invite the collaboration of the Federal Ministry to the widest extent compatible with the preservation of his own responsibility, we . would refer to the question of lending Indian personnel of the Defence forces for service outside India. There have been many occasions on which the Government of India have found themselves able to spare contingents for operations overseas in which considerations of Indian defence have not been involved; and we may presume that such occasions will recur. There appears to be some misconception in India on this point, which it would be desirable to remove Ît 1s not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive; or conversely, that if it is not excessive troops cannot be spared for service elsewhere. These standing forces are in the nature of an insurance against perils which may not always be insistent but which nevertbeless must be provided for. There is thus no ground for assuming a prima facie objection to the loan of contingents on particular occasions. If on such occasions the Governor-General is asked whether he can lend a contingent, he must decide, first, whether the occasion involves the defence of India in the widest sense, and secondly, whether be can spare the troops having regard to all the circumstances at the time. Both these decisions would fall within the exclusive sphere of his responsibility. If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow-countrymen were exposed to the risks of operations in a cause that was not their own. In view, however, of the complexities that may arise, we do not feel able to recommend that the ultimate authority of the Governor-General should be limited in this matter. Our proposal is that when the question arises of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision do not involve the detence of India in the broadest sense, he should not ngree to lend such personnel without consultation with the Federal Ministry. We have little doubt that in practice he will give the greatest weight to the advice of the Federal Ministry before reaching his final decision. The financial aspect has also to be considered. Although in the circumstances we are discussing the defence of India would not be involved, it might on occasions be in India's general interests to make a contribution towards the cost of external operations. Proposal 150 of the White Paper reproduces the provision of s. 20 (1) of the Government of India Act that "the revenues of India shall be applied for the purposes of the government of India alone"; and a contribution in the general interests of India would come within the scope of that provision. Under the new Constitution, however, the recognition of interests of this nature would fall within the province of the Federal Ministry and Legislature, since, ex hypothesi, they would not be defence interests. If, therefore, the question should arise of offering a contribution from India's revenues in the circumstances we are discussing (and the interests in question did not fall under the other reserved department of External Affairs) we are of opinion that it would need to be ratified by the Federal Legislature.")

Objected to.

On Question:-

Contents (17).
Marquess of Salisbury.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.

Not Contents (3).
 Lord Ker (M. Lotbian).
 Mr. Cocks.
 Mr. Morgan Jones.

Contents (17)-(continued).

Not Contents (3).

Viscount Halifax.
Lord Middleton.
Lord Hardinge of Penshurst
Lord Rankeillour.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Sir Samuel Hoare.
Lord Eustace Percy.
Earl Winterton.

The said amendment is agreed to.

New paragraph 175A is again read.

The further consideration of paragraph 175A is postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

# Die Veneris 6° Julii 1934.

#### Present

MARQUESS OF SALISBURY
MARQUESS OF ZETLAND
MARQUESS OF LINLIHGOW
MARQUESS OF READING
EARL OF LYTTON
LORD KFR (W LOTHLAN)
LORD HARDINGE OF PENSHURST
LOFD SNELL
LORD RANKFILLOUR
LORD HUTCHISON OF MONTROSE

MR BUTLER.
MAJOR CADOGAN
SIR AUSTFY CHAMBERLAIN
MR COCKS
SIR REGINALD CRADDOCK
MR DAVIDSON
MR FOOT
SIR SAMUEL HOARE
MR MORGAN JONLS
SIR JOSEPH NALI
LORD EUSTAGE PERCY.
SIR JOHN SIMON.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair

The Order of Adjournment is read The Proceedings of Wednesday last are read

Paragraph 176 is again read

It is moved by Mr Morgan Jones Mr Cocks, and the Lord Snell Page 89, lines 29 to 35, to leave out from the beginning of line 29 to the end of the paragraph and to insert ('We consider that there should be a definite programme of Indianization with a time limit of thirty years. It may be urged that it is impossible to lay down an exact period within which an "Indianized Army would be capable of the defence of India. There may be "truth in this, but we consider that it is necessary, if the work of Indianization is to be pushed forward with the greatest possible energy that there should be a clearly marked time by which the goal is to be attained. From a study of such reports and documents as have been available to us we believe that this could be successfully accomplished in a period of 25 years. We suggest that this period should be aimed at, but that a maximum of 30 years should be fixed which must not be exceeded'.

The same is disagreed to

Paragraph 176 is again read.

The further consideration of paragraph 176 is postponed.

Paragraphs 177 and 178 are again read

It is moved by Mr Cocks, Mr. Morgan Jones, and the Lord Snell. Pages 89 and 90, to leave out paragraphs 177 and 178

The same is disagreed to.

Paragraphs 177 and 178 are again read

The further consideration of paragraphs 177 and 178 is postponed.

Paragraph 179 is again read and postponed.

Paragraph 180 is again read.

It is moved by Sir Samuel Hoarc and Mr. Butler Page 91, line 8, at the nd to insert, ('Although the Executive authority of the Federation vested in the Governor General as the King's representative includes the super-intendence, direction and control of the malitary government in the sense

All amendments are to the Draft Report (vide vefra, paras 1-42B, pp. 470-481, and ide supra, paras 43-453, pp. 64-253) and NOT to the Report as published (Vol. 1, Part 1). A key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

"in which these words are used in section 33 (1) of the Government of Act, the command of the Forces in India will be exercised by a Comma

"in-Chief to be appointed by His Majesty.")

The same is agreed to.

Paragraph 180 is again read as amended.

The further consideration of paragraph 180 is postponed.

Paragraph 181 is again read.

It is moved by the Lord Snell, Mr. Cocks and Mr. Morgan Jones. Page 91, to leave out paragraph 181 and to insert the following new paragraph:—

(" 181. We see no reason why the Indian Federation should not have control over the Department of Foreign Affairs. We recognise that the Viceroy, in his relations with those Indian States which do not join the Federation, and in relation to all the States in regard to those subjects which are outside the Federation, will continue to control the Department which in the Government of India has been hitherto described as foreign; but we consider that in its relationship to the rest of the world India is entitled to have the same control over her foreign policy as that which is conceded to the other Dominions. It may be suggested that, inasmnch as Indian Defence is to be a Reserved Subject, Foreign Affairs should also be reserved, but in our view this is to turn the argument inside out. Armaments depend on foreign policy. India has for years paid for her own defence, although the foreign policy of the British Commonwealth of Nations, of which she is a member, has been decided without her having an effective voice. We would point out that at the Peace Conferences and subsequently in the League of Nations India has had representation as a nation. We consider that this recognition which was given to her as a consequence of the services of her sons in the Great War should be given a full content by conceding to her the same degree of control over her external relations as is enjoyed by her sister States in the British Commonwealth,")

The same is disagreed to.

Paragraph 181 is again read.

The further consideration of paragraph 181 is postponed.

Paragraph 182 is again read and postponed.

Paragraph 183 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 92, lines 13 to 36, to leave out from the beginning of line 13 to the end of the paragraph and to insert ("It seems to us a mistake to have a special reserved." Department of the Government of India to look after the relations musicized Department of the Government of India to look after the religious ministra-"tions of the Army and Services in India. Such ministrations, in our opinion, " should form part of the organization of the Army and the Services. Whether "it is wise to make such ministrations a drain on the revenues of a people of " other religions is, we think, a point that has not heretofore been sufficiently "considered. While we are prepared to accept the proposition that so long as "we have an Army in India their spiritual needs should be provided for, we "cannot see why this can only or best be achieved by the proposal of the "White Paper to retain the Ecclesiastical Department permanently as a "special Reserved Department of the Government of India. We think it "would he very much better to abolish this Department and include religious " ministrations as an integral part of the Army administration. We would go "further and propose that so long as we have an Army and Services in India "whose spiritual needs are entirely different from those of the peoples amongst "whom they serve, it would be a gracions act on our part if the necessary

Place penses were placed on British instead of on Indian revenues. We are in any event entirely opposed to this being included as a Reserved Department of the Government of India ')

The same is disagreed to

Paragraph 183 is again read

The further consideration of paragraph 183 is postponed.

Paragraph 184 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 93, line 21, after deliberations") to insert ("—and indeed that there will be free resort by both parties to mutual consultation")

The same is agreed to.

Paragraph 184 is again read, as amended

The further consideration of paragraph 184 is postponed.

Paragraph 185 is again read and postponed

Paragraph 186 is again read

It is moved by the Marquess of Linlithgow Page 94, lines 24 and 25, to leave out ("even more than the Provincial Governors").

The same is agreed to

It is moved by Mr Morgan Jones, Mr Cocks, and the Lord Snell Page 94, line 26, after ('head ') to insert ("who would be fully conversant with "Indian affairs and in close contact with the administration')

The same is disagreed to

It is moved by the Lord Snell, Mr Morgan Jones, and Mr Cocks. Page 94, lines 26 to 28, to leave out from ('head') in line 26, to ("it") in line 28. The same is disagreed to

Paragraph 186 is again read as amended

The further consideration of paragraph 186 is postponed

Paragraph 187 is read and postponed.

Paragraphs 188 to 192 are read

It is moved by the Lord Eustace Percy Pages 94 to 97, to leave out Paragraphs 188 to 192 inclusive, and to insert the following new paragraph —

"188 We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province, and those remarks apply mutates mutandes to the relations between the Federal Executive and Legislature It is only necessary to have to refer briefly to two special complications which are introduced into the Federal problem, the existence of the Governor-General's Reserved Departments and the question of the representation of the States in the Ministry On the first point, we have already spoken frankly of the difficulties presented by a system of dyarchy We can only repeat that, faced by a choice in which every conceivable alternative involves some division of responsibility and some danger of friction, we recommend the alternative which draws the line of division at Defence and Foreign Affairs as corresponding most nearly with the realities of the situation, that, of these, the cruical question, so far as the Legislature is concerned, is Defence, and that on this question we regard an All-India Federation as the best means of ensuring that the Central Legislature, while discharging its legitimate function of discussion and criticism, will not (in the phrase of the Statutory Commission) seek 'to magnify its functions in the reserved field' On the second point, it will be observed that,

under the White Paper proposals, the Governor-General is to be directed by his Instrument of Instructions to include, 'so far as possible', in his Ministry, not only members of important minority communities, but also representatives of the States which accede to the Federation may be thought that this proposal runs the risk of adding to the possible dangers of communal representation in the Ministry, to which we have referred in speaking of the Provinces, the further dangers of territorial representation This, however, is a common feature of all Federations Few, if any, have in practice found it possible to constitute an Executive into which an element of territorial representation does not in some sense enter, and in the Swiss Constitution the principle of such representation is explicitly laid down, so that to advance this as an argument against the White Paper proposals would be, in effect, to reject an All-India Federation even as an ultimate ideal Morcover, the limitation of the functions of the Federal Executive to matters of essentially All-India interest is calculated to minimise the dangers of both communal and territorial representation Tanfis and exuse duties, currency and transport are national, not communal questions, and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic rather than a communal origin. There will, therefore, be centripetal as well as centrifugal forces, and it seems to us indeed conceivable that, until the advent of a new and hitherto unknown alignment of parties, a central Executive such as we bave described may even come to function, as we believe that the Executive of the Swiss Confederation functions, as a kind of business committee of the Legislature ")

After debate the further consideration of the above amendment is postponed.

Paragraphs 188 to 192 are again read.

The further consideration of paragraphs 188 to 192 is postponed.

Paragraph 193 is again read and postponed.

Paragraph 194 is again read

It is moved by Mr Morgan Jones, Mr Cocks, and the Lord Snell Page 98, line 30, after ("Paper") to insert ("It should be recognized that to attempt "to provide a legislative body which shall be representative of a population of over 350 millions is without precedent. We are met at the outset by "the difficulty of applying the representative system on a basis of direct representation to a unit of such magnitude. On the one hand, if the constituencies were of a reasonable size, the resultant chamber would be unmanageably large, if on the other hand, the chamber were of a reasonable gives the constituencies on which it was based would necessarily be enormous.")

The same is agreed to.

Paragraph 194 is again read as amended

The further consideration of paragraph 194 is postponed,

Paragraph 195 is again read

It is moved by Mr Morgan Jones, Mi Cocks, and the Lord Snell Page 99, line 3, at the end to insert ("As we understand the proposals of the White "Paper it is suggested that the two Chambers, except for the proviso that "Money Bills will be initiated in the Assembly and that the range of the "functions of the Upper Chamber in relation to Supply will be less extensive "than those of the Lower Chamber, are to possess equal powers and that "in the event of differences between the two Houses, the device of a Joint "Session should be employed We consider that, in effect, this really makes "the Central Legislature a single Chamber, meeting for certain purposes in

"two sections, and makes an unnecessary duplication of representation, which results in an unwieldy body of legislatures. We, therefore, propose that

"there should be only one Chamber at the Centre, and we accept the proportions laid down for representation from the Provinces and the States as

" applying to a single chamber.")

Objected to.

On Question :---

Contents (3).

Lord Snell. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (20).

Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl of Lytton. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy.

Sir John Simon.

Sir John Wardlaw-Milne

The said amendment is disagreed to.

Paragraph 195 is again read.

The further consideration of paragraph 195 is postponed.

Paragraphs 196 to 198 are again read and postponed.

Paragraphs 199 to 203 are again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Pages 100 to 102, to leave out paragraphs 199 to 203 inclusive, and to insert the following new paragraphs:—

("199. There are, broadly, three possible ways of constituting the electorate for the federal legislature so far as British India is concerned, apart from the indirect method adopted in the Minto-Morley reforms, which now has few, if any, supporters: the ordinary system of direct election by electors in territorial constituencies: the indirect system in its group form, whereby the whole electorate is divided into small groups of primary voters, say 20 to 50, who elect secondary electors, who then elect the candidate in ordinary territorial constituencies: and the indirect system in the form in which the legislature of the units which, in the case of India would be the provinces, elect the members of the federal house. We will deal with these in reverse order."

"200. We are opposed to the third alternative for five main reasons. In the first place it means that the provinces, in effect, will be able to control the Central Legislature and therefore the Ministry. The supreme problem in India is the maintenance of its constitutional unity. The breakdown of its central government is the greatest catastrophe which could overtake the country. Yet to constitute the central legislature by

what, in effect, will be provincial delegations, the majority of whom will hold their seats on the nomination, and at times of re-election at the discretion, of the Provincial Governments and the parties which support them in office, would, in our view aggravate the tendency to provincial separatism which already exists and endanger the unity of India might also confront the Governor-General with situations of great gravity if he alone had to stand for Indian unity as against provincial separatism We see no reason for abandoning in the case of India the almost invariable practice of other federations that the Upper House should represent the units and the Lower House the nation In the second place the system mevitably involves the confusion of provincial and all-India issues at times of election with bad results for both central and provincial legislatures Legislatures ought to be elected on the issues which they are constitutionally responsible for dealing with The indirect system under consideration means that the provincial elections may turn on all-India issues such as tariffs or income tax, in which case there will be no clear decision about the provincial issues which the legislatures will alone have to deal with in the next few years or that they may turn on provincial issues alone, in which case the electorate will have no voice or influence in all-India issues In the third place the system inevitably opens the door to corruption for it means that each member of the central legislature, which will deal with matters vitally affecting business and finance will be elected by a number of provincial electors on the average not more than 7 or 8 in number So far as we can ascertain the number of members of the Provincial Legislative Assemblies required to elect a member of the All-India Legislative Assembly, according to the proposals for indirect election submitted to us would be as follows .-

		General Seats	. Mosiem Seats.	Sikh Seats
	Madras	. 8	4	
	Bombay	9	5	
	Benga1	8	7	
	UP	8	6	
•	Punjab	8	7	6
	Bihai	. 6	5	
	CP	10	5	

"In the Council of State the equivalent numbers would be about the same, though at the first election the members would go through the strange process of electing two members, one after the other opportunities for corruption under a system which enables any seven or eight members of a provincial legislature to return a member of the Central Legislature needs no emphasis from us Fourthly, the system of electing the central legislature by the provincial legislatures is bound to be extremely intricate and confusing with its combination of electoral colleges elected by enormous constituencies in some provinces with election by the provincial Upper Houses which are themselves elected in part by the Provincial Assemblies, in others It is likely to be caucus ridden and it will inevitably make necessary large numbers of provincial bye elections whenever an election to the central legislature takes place, with possibly unfortunate results on the stability of the provincial ministries. Finally, this form of indirect system involves reversing a system which has already been in operation for the Indian Legislative Assembly not unsuccessfully for thirteen years and which has the support of the great majority of Indian political leaders. It is sometimes said that the members of existing legislatures are not in adequate touch with their constituents, but this is almost inevitable so long as the legislature itself is without responsibility as it constitutionally is to day The contact with the constituencies is likely rapidly to increase with the advent of a measure of responsible government at the centre. In the

light of these considerations we feel that we have no option but to reject the method of composing the Central legislature by indirect election from the Provincial legislatures.

' 201 The arguments for the second alternative, the group system of indirect election, are very strong. On the one hand the population of British India is over 250,000,000, which would mean a population of about 500,000 in every constituency and with adult franchise an electorate of between 250 000 and 300,000 per member, even with a house as large as 500 Such an electorate would be far too large to make possible that effective contact between the representative and his constituents which is the necessary basis for the successful working of Parliamentary institutions On the other hand there is a great deal to be said for the view that in a country the overwhelming majority of whose people are still illiterate and live in villages, the best basis for a representative system is that the electors for the central assembly should be men or women who have been chosen by small groups of villagers to vote on their behalf. If the groups were of say 25 persons even adult suffrage at the primary stage would only result in 10,000 secondary electors per constituency in a house of 500 or 20,000 in a house of 250 We have, however, been reluctantly convinced by the report of the Indian Franchise Committee, which made a serious attempt to work out a system of this kind, and other evidence, that no group system is practicable to-day in India. The administrative difficulty involved in forming and polling the groups seems to be insuperable, and the problem of framing any system of election within the group which will produce a truly representative elector seems at present to be insoluble, owing to caste, communal and other divisions )

' 202 We are, therefore, driven to the conclusion that the right basis for the constitution of the Federal House is that proposed in the White Paper, namely direct election to the Legislative Assembly from erritorial constituencies by an enlarged but still restricted electorate, and indirect election to the Council of State from the Provincial Legislative Assembles by the system of the single transferable vote think that this will produce that balance of representation at the centre between the provincial and national interests which the history of other federations shows to be both desirable and to bave stood the test of It avoids the constitution of the Council of State mainly ехрепевсе by election from provincial Upper Houses, themselves partly the product of indirect elections, which must, as it seems to us, result in a federal second chamber which is unduly representative of vested interests and not sufficiently responsive to popular feeling and needs to be given equal power with an Assembly which is itself indirectly elected by the provincial assemblies We are prepared to agree to second chambers in the provinces provided they are possessed only of the power to delay and revise hasty or ill-judged legislation for more is not necessary in the restricted sphere of provincial powers We are in favour of the White Paper proposal that the two houses of the central legislature one of which is to represent the units by indirect election from the popular provincial house and the other the nation by direct election, should have equal powers. But we are opposed to any proposal whereby the two federal houses are indirectly elected by the provincial assemblies and Upper Houses respectively and possessed of equal powers '

'203 We think that the franchise proposed in the White Paper, namely the electorate which has exercised the franchise for the provinces since 1920 and has therefore gained experience, is a sensible extension, and that with the proposals for the special representation of women, labour, landlords, commerce, and depressed clases, it secures a reasonable representation to all the main sections and interests of the community.

We recognise the difficulty which candidates will have in establishing contact with their constituents in the large areas which the federal constituencies must necessarily comprise, especially so long as separate electorates continue But the facilities for communication are daily India bas indigenous institutions through which public opinion is able to express itself and with which candidates can get into In almost all countries the radio and quick transport make possible constituencies far larger than were practicable a few years ago The Indian Franchise Committee has shown that with 250 members for British India the number of electors ought not to exceed 30 000 to 40,000 in each constituency, that the average rural constituency will not exceed 6 000 to 12 000 square miles, and that these constituencies will be one-half the size of the constituencies which have hitherto elected to the present We admit the force of the view that under present conditions Assembly such constituencies will be difficult to manage, but we think that the objections to such constituencies are far less serious than those which we have urged against constituting the central legislature solely by indirect election from the provincial legislatives Constituencies of immense area and containing enormous numbers of voters are inherent in large scale Federations, and in Canada, Australia and the United States have been in existence for many decades without impairing the system of representa-While however, we support the franchise proposals tive government in the White Paper for the federal assembly, we believe that any considerable extension of the franchise towards adult franchise under a system of direct election to the Assembly would cause an inevitable breakdown We do not believe that constituencies both of large size and containing an electorate of between 200 000 and 3000 000 people can be made the hasis of a healthy Parliamentary system. We think that Parliament and Indian public opinion should face these facts and recognise that if the elections to the federal Assembly are to be direct, in the sense that the electorate will vote directly for members of that Assembly and on federal issues alone, some system of group election will have to be contrived before any substantial extension of the federal franchise can take place We are by no means convinced that this cannot be found The group system apparently works with considerable success in many countries where conditions are not dissimilar to those of India and we hope that Indian public opinion will recognise that if its declared goal of adult suffrage is to be reached it must contrive some system of group or secondary election to make it practicable ")

It is moved by Mr Cocks Mr Foot and Mr Morgan Jones, as an amendment to the above motion to insert the proposed new paragraphs 199 to (We') in line 16 of the proposed new paragraph 202—

Objected to.

On Question :--

Contents (5)
Marquess of Reading.
Lord Ker (M. Lothian),
Mr. Cocks
Mr. Foot
Mr. Morgan Jones.

Not Contents (18)
Marquess of Salishury
Marquess of Letland
Marquess of Linlithgow
Larl of Lytton
Lord Hardinge of Penshurst
Lord Rankeillour
Lord Hutchison of Montrose
Mr Butler
Major Cadogan
Sir Austen Chamberlain,
Sir Regmald Craddock.

Contents (5).

Not Contents (18)-(continued.)

Mr Davidson
Sir Samuel Hoare
Sir Joseph Nall
Lord Eustace Percy.
Sir John Simon
Sir John Wardlaw Milne.
Earl Winterton.

The sa d amendment to the above motion is disagreed to.

The original amendment is again moved

The same is disagreed to

Paragraph 199 is again read.

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell. Page, 100, line 12, to leave out ('may also be argued') and to insert ("should also be pointed out")

The amendment, by leave of the Committee, is withdrawn

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 100, lines 16 to 30 to leave out from ('system,") in line 16 to the end of the paragraph and to insert ("Bearing in mind the strength of Indian opinion in "this matter we have come to the conclusion, notwithstanding the objections" which can be urged against it, that there is no alternative to the adoption "of a system of direct election")

The amendment, by leave of the Committee, is withdrawn

It is moved by The Lord Fustace Percy Page 100 line 30, at the end to insert ( Indeed, any considerable extension of the franchise under a system of direct election would cause an inevitable breakdown. We do not believe 'that constituencies both of large size and containing an electorate of between "200,000 and 300,000 people can be made the basis of a healthy parliamentary "system. We think that Parliament and Indian public opinion should face these facts and should recognize that direct election, apart from its immediate merits or demonstrate at the present time, cannot provide a sound basis for Indian constitutional development in the future. We cannot "believe that it would be used to commit limba at the outset of here constitutional development to a line which must prove to be a blind alley.") The same is agreed to

Paragraph 199 is again read as amended

The further consideration of paragraph 199 is postponed

Paragraphs 200 and 201 are again read and postponed

The following amendment is laid before the Committee —

Mr Attlee, Mr Cocks, Mr Morgan Jones and the Lord Snell to move Pages 100 and 101, to leave out paragraphs 200 and 201.

The consideration of the said amendment is postponed

The further consideration of paragraphs 200 and 201 is postponed

Paragraph 202 is again read

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 101, to leave out paragraph 202 and to insert the following new paragraph—

("202 We have examined the proportion of members allocated to the various Provinces, and while we recognize that a smaller Province must have some addition to its population ratio, we are unable to accept

the differentiation made in favour of Bombay and the Punjab at expense of Madras, Bengal and the United Provinces We see no real a why Bombay should be allocated almost two members per million vale Madras and Bengal get less than one We consider that all Provinces with the exceptions mentioned above, should come in on an equal basis

"We have already expressed our objections to special representation being given to the landlords, the universities, commerce and industry, and these objections hold good at the Centre as well as in the Provinces We recognize, however, that there is a case for some representation of commerce and industry at the Centre, in view of the character of the questions which will come up for decision here, and we should therefore, as a temporary measure, be prepared to see some representation given to those interests. In other respects, we accept the allocation of seats given in the White Paper subject to the following variations.—

"The White Paper proposes that in the Federal Assembly Lahour should be given ten seats as against twenty-six assigned altogether to the representatives of Commerce and Industry, the landlords and the Europeans. We regard this as wholly disproportionate as it would mean that Lahour would only have 4 per cent of the total seats from British India, and that a few thousand Enropeans would have a greater voting strength than the many millions of industrial and rural wage earners. As is pointed out by the Indian Franchise Committee Labour legislation will be predominently a Federal Subject under the new constitution, while the restricted franchise at the Centre will not bring on the electoral roll the same proportion of the working classes as in the case of the provincial legislatures. It is, therefore, especially important that Labour representation should be adequate

"We recommend, therefore, that the seats allotted to Labour should be raised to twenty-six

"We note that according to the White Paper the distribution of seats is to be on a provincial basis. We suggest that this requires modification. Certain trades and industries, such as textiles and railways are distributed over more than one province. If seats should be allocated on a purely provincial hasis, certain trade unions would be handicapped, while others would be given more than their reasonable quota of representation. We recommend that Labour seats should be fixed on an industrial basis with due regard to provincial considerations.

"We accept the provisions of the White Paper for the Federa Franchise, subject to the amendments which we have suggested it respect of the qualifications of women electors, and to our proposal in regard to Labour representation, but we desire to state that we regard the provision as only a temporary one until a means can be found o extending the franchise and of making the British-Indian side of the Federal Legislature more representative of the mass of the people")

# The same is disagreed to

It is moved by the Lord Eustace Percy Page 101, lines 15 to 18, to leave out from ("bodies") in line 15, to ('we") in line 18, and to insert ("There "are interesting precedents for this, for instance in the Dutch East Indies, "and there is much to be said for the view that, in principle, it is the best "form of indirect election. Its practical merits, however, depend upon the "character of the local bodies. In India, this form of indirect election was a "prominent feature of the Morley-Minto Constitution, and the general tenor "of the evidence we have received is that the system did not work well and "that this experience of it has created a strong prejudice against it in the "mind of many Indians. Here again, we would repeat what we have said in paragraph 129, that we do not wish to rule out the introduction of some "system on these lines in the future and that the problem is essentially one

"which Indians should consider for themselves, but we are satisfied that, "at the present time, it would be a mistake to base the Federal Assembly "upon this form of election")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 202 is again read

The further consideration of paragraph 202 is postponed

It is moved by the Marquess of Reading the I ord Ker (M Lothian), and Mr Foot Page 101, after paragraph 202 to insert the following new paragraph —

'202A We feel strongly, however, that it is impossible for Parliament to lay down to-day the exact form which the Indian Federal Legislature is to take for any long period ahead. This question has been examined by many Commissions and Committees and Round Table Conferences and every proposal which has emerged has been recognised to be the kind of tentative and incertain compromise which is inherent in an attempt to create a Federation on a scale and of a character hitherto without precedent. We feel therefore, that while our proposals seem to us the best combination which is practical at the present time, it is mevitable that further consideration should be given to the composition of the central legislature in the light of practical experience of the working of the new constitution. We do not propose that there should be any formal examination of the problem by a statutory Commission after any specific date, for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that it should be clearly understood that after sufficient time has elapsed to enable clear judgments to be formed of the way in which the constitution works and of the new political forces it has brought into being, it may be necessary to propose amendments and that the Indian Federal legislature should lay its recommendations before Parliament in the form recommended in later paragraphs of this Report')

The same is agreed to

New paragraph 202A is again read

The further consideration of paragraph 202A is postponed.

Paragraph 203 is again read

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell. Pages 101 and 102, to leave out Paragraph 203

The same is disagreed to

Paragraph 203 is again read

The further consideration of paragraph 203 is postponed.

Paragraph 204 is again read

It is moved by Mr Cocks and Mr Morgan Jones Page 102, lines 22 to 27, to leave out from the beginning of line 22 to the end of the paragraph and to insert ("agree with this proposal")

Objected to On Question —

Contents (2)

Mr Cocks. Mr. Morgan Jones. Not Contents (15).

Marquess of Salisbury
Marquess of Zetland
Marquess of Linlithgow.
Marquess of Reading
Lord Ker (M. Lothian)
Lord Hardinge of Penshurst.
Lord Rankeillour.

Contents (2)

Not Contents (15)—(continued)
Lord Hutchison of Montrose Mr Butler
Sir Austen Chamberlain
Sir Reginald Craddock
Mr Davidson

Sir Samnel Hoare Lord Eustace Percy Sir John Wardlaw-Milne

The Earl Winterton did not vote

The said amendment is disagreed to

Paragraph 204 is again read

The further consideration of paragraph 204 is postponed

Paragraph 205 is again read

It is moved by the Lord Eustace Percy Page 102, line 34, after (" Paper ") to insert (" If the size of the Council of State were materially reduced and if, as we have recommended, one-third of its membership is replaced every three years, the number of members whom provincial electoral colleges would be called upon to choose at any given election would be too small for the method of the single transferable vote to produce an equitable result from the point of view of minorities, and we should greatly regret the introduction of a communal basis for the Federal Upper House. There "is another consideration affecting the Federal House of Assembly It would "be difficult, if the size of this House were reduced, to make any proportionate 'reduction in the number of seats assigned to special interests, since this would in several instances deprive them of seats which they have in the "existing Legislative Assembly These special interest seats, apart from ' those assigned to European commerce and industry, would in practice be almost entirely occupied by members of the Hindu community. We think "it important that the Muhammadan community should have secured to it, as the White Paper proposes, one-third of all the British-India seats, but ' if the number of the special interest seats is to remain undisturbed, the application to a substantially smaller House of the undertaking given to the ' Muhammadans would result in a disproportionate number of the ordinary (non-special) seats being allocated to the Muhammadans')

The same is agreed to

It is moved by the Lord Eustace Percy Page 102 lines 34 and 35 to leave out ('In the first place, ) and to insert ("In addition to these considerations" in regard to British Indian representation, it must also be borne in mind "that ')

The same is agreed to

It is moved by the Lord Eustace Percy Page 103 lines 3 to 5, leave out from ("figure") in line 3 to ('If") in line 5

The same is agreed to

It is moved by the Lord Eustace Percy Page 103, lines 5 to 27, to leave out from ( numbers ) in line 5 to the end of line 27

The same is agreed to

Paragraph 205 is again read as amended

The further consideration of paragraph 205 is postponed

It is moved by the Lord Eustace Percy Page 103, after paragraph 205 to insert the following new paragraph

('2051 We have carefully considered the proposal that the Federal Legislature should consist of one Chamber only We recognise that there is much to be said for this proposal, but, on the whole, we do not

feel able to reject the view which was taken by the Statutory Commission and which has been also consistently taken by, we think, the great bulk of both British and Indian opinion during the whole course of the Round Table Conferences, that the Federal Legislature should be bi-cameral Certainly, a reversal if this view would be distasteful to nearly all, if not to all, the Indian States.")

The same is agreed to.

New paragraph 205A is again read.

The further consideration of paragraph 205A is postponed.

Paragraph 206 is again read and postponed.

Paragraph 207 is again read.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 104, lines 11 to 13, to leave out from the beginning of line 11 to the end of the sentence and to insert ("We consider that the introduction of status unneces-"sarily complicates the question, and we would desire to see laid down a "definite population basis for representation, though we recognize that it "may be difficult to obtain consent to this simplification. In any event, we think that there should be a definite formula which could be applied to every State, so that if, as may well be, the Federation is built up by the gradual accession of States, there may be at hand the means of allocating forthwith the representation to which any particular State is entitled.")

The same is disagreed to.

It is moved by Sir Samuel Hoare and Mr Butler. Page 104, line 18, at the end to insert ("It would also, we suggest, contribute to the selection of "better qualified States' representatives in the Federal Legislature if adjacent "States, at any rate those not entitled under the scheme proposed to "continuous individual representation, were grouped together regionally "for the selection of joint representatives in the Federal Legislature who "would retain their seats throughout its full term.")

The same is agreed to.

Paragraph 207 is again read as amended,

The turther consideration of paragraph 207 is postponed.

Paragraph 208 is again read.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 104, lines 25 to 39, to leave out from ("unfilled") in line 25 to the end of the paragraph and to insert ("We agree with this and are opposed to the "suggestion that weightage should be given to the States' representatives if "the full number of States has not joined the Federation. We think that "by allowing only such representation to the States side as is proportionate "to the number and population of the States acceding there will be an "incentive on the part of those in the Federation to work for the inclusion "of others")

The same is disagreed to.

Paragraph 208 is again read.

The further consideration of paragraph 208 is postponed

Paragraphs 209 to 213 are again read and postponed.

Ordered, that the Committee be adjourned to Monday next at half-past Four o'clock.

## Die Lunae 9° Julii 1984.

### Present :

LORD ARCHBISHOP OF CANTERBURY,
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MUDI STON.

VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. Attlee. Mr. Butler. Major Cadogan.

Mr. Cocks. Sir Reginald Craddock.

Mr. DAVIDSON, Mr. FOOT.

SIR SAMUEL HOARE.
MR. MORGAN JONES.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Friday last are read.

Paragraph 214 is again read.

It is moved by Mr. Cocks, and Mr. Morgan Jones. Page 106, lines 15 to 37, to leave out from ("Assemblies.") in line 15 to the end of the paragraph and to insert ("and we see no reason why the same principle should not be applied ("to the Federal Legislature, as in the case of the United Kingdom.")

Objected to.

On Question:-

Contents (3)

Lord Ker (M. Lothian). Mr. Cocks.

Mr. Morgan Jones.

Not Contents (17)

Lord Archbishop of Canterbury.

Marquess of Salisbury. Marquess of Linlithgow.

Earl of Derby. Earl Peel. Viscount Halifax. Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler. Major Cadogan.

Sir Reginald Craddock.

Mr. Davidson.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

The amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 106, lines 23 to 27 to leave out from ("Session.1"), in line 23 to the end of the paragraph.

Objected to.

1 White Paper, Proposals 38, 41 and 48.

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. 1, Part I.)

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

# On Question:-

Contents (6)

Lord Archbishop of Canterbury.

Lord Ker (M. Lothian).

Lord Snell. Mr. Cocks.

Mr. Foot. Mr. Morgan Jones. Not Contents (16)

Marquess of Salisbury.

Marquess of Linlithgow. Earl of Derby.

Earl Peel.

Viscount Halifax.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler. Major Cadogan.

Sir Reginald Craddock.

Mr. Davidson.

Sir Samuel Hoare.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

The amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 106. ines 35 to 37, to leave out from ("forthwith") in line 35 to the end of the paragraph.

The same is agreed to.

Paragraph 214 is again read as amended.

The further consideration of paragraph 214 is postponed.

Paragraph 215 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 107, lines 5 to 9, to leave out from the beginning of line 5 to the end of the sentence in line 9.

The same is disagreed to.

: Paragraph 215 is again read.

The further consideration of paragraph 215 is postponed.

Paragraph 216 is again read.

It is moved by Sir John Wardlaw-Milne. Page 108, lines 2 and 3, to leave out from (" is ") in line 2 to (" be ") in line 3 and to insert (" that there should be no such prohibition, but that the matter should ").

The same is agreed to.

Paragraph 216 is again read as amended.

The further consideration of paragraph 216 is postponed.

Paragraph 217 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 108, line 31, to leave out ("though") and to insert ("now that").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 108, lines 34 to 36, leave out from ("other,") to the end of the sentence and to insert ("a nexus of a new kind must be established between the "Federation and its constituent units.")

The same is agreed to.

It is moved by the Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones. Page 108, after the above amendment to insert ("We are impressed by "the possible dangers of a too strict adherence to the principles of what "is known as Provincial Autonomy. The Indian Statutory Commission in its recommendations for Provincial Autonomy was, we think, not unaffected by the desire to give the largest possible ambit to autonomy in the Provincial sphere, owing to their inability at that time to recommend responsibility at the Centre. The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop, and perhaps over-develop, a desire for complete freedom of control from the Centre.")

The same is agreed to.

Paragraph 217 is again read as amended.

The further consideration of paragraph 217 is postponed.

Paragraph 218 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, line 2, after ("officers") to insert ("subject, in the case of the "States, to the terms of the Ruler's Instrument of Accession").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, lines 4 to 11, to leave out from ("Government") in line 4 to the second ("The") in line 11.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 109, lines 20 to 24, to leave out from ("part") in line 20 to the first ("to") in line 24, and to insert ("but in addition to this general statement of a moral obligation, the White "Paper proposes to empower the Federal Government").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, line 29, at the end to insert ("In the case of the States, it is "proposed that the Ruler should accept the same general moral obligation, "which, as we have said, will rest upon the Provincial Governments, to "secure that due effect is given within the territory of his State to every "Federal Act which applies to that territory. But we think that the White "Paper rightly proposes that any general instructions to the Government "of a State for the purpose of ensuring that the federal obligations of the "State are duly fulfilled shall come directly from the Governor-General "himself.")

The same is agreed to.

Paragraph 218 is again read as amended.

The further consideration of paragraph 218 is postponed.

Paragraph 219 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 109, leave out paragraph 219 and to insert the following new paragraph:—

("219. We are of opinion that the proposals in the White Paper on this subject require modification in two directions. In the first place, the White Paper draws no distinction between the administration and execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate (List 1) and the administration and execution of Federal Acts in the concurrent field (List 3). It is evident that in its exclusive field the Federal Government ought to have power to give directions to a Provincial Government as proposed in the White Paper; but it is much more doubtful whether it should have such power in the concurrent field. The objects of legislation in this field will be predominantly matters of Provincial

concern. The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience, and, if this procedure were to carry with it automatically an extension of the scope of Federal administration, the Provinces might feel that they were exposed to dangerous encroachment. On the other hand, the consideration of practical convenience which will prompt the use of the Federal Legislature in this field will often be the need for securing uniformity in matters of social legislation, and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration. While, therefore, we think that the Federal Government should have no general power of giving directions to the Provincial Governments in regard to the administration of Federal Acts in the concurrent field, it is important that the Constitution should not impose an absolute bar to the exercise of such power by the Federal Government in cases where it is recognised to be necessary.

The same is agreed to.

New Paragraph 219 is again read.

The further consideration of paragraph 219 is postponed.

Paragraph 220 is again read.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 110, line 1, at the beginning to insert ("In "the second place") and to leave out ("however").

The same is agreed to.

It is moved by the Lord Eustace Percy and the Marquess of Zetland. Page 110, line 4, after ("Government") to insert ("Under the White "Paper proposals.")

The same is agreed to.

Paragraph 220 is again read as amended.

The further consideration of paragraph 220 is postponed.

It is moved by the Lord Raukcillour. Page 110, after paragraph 220, to insert the following new paragraph:—

("220A. What, however, is the ultimate remedy in the event of inveterate contumacy on the part of the Province? If it be considered to amount to a breakdown of the Constitution the Governor could be bidden by the Governor-General to use his reserve powers accordingly. It is, however, easy to imagine that the quarrel, however obstinate, might be confined to a sphere of no great importance and that the application of the ultimate weapon of authority would be disproportionate, if not grotesque. We suggest that in such a situation power should be given to withhold revenue which would otherwise be due to the Province. In the case of a State there appears to be no remedy under the proposals of the Government except such influence as the Viceroy might exercise in the sphere of paramountcy.")

he same is disagreed to.

aragraph 221 is again read.

is moved by the Lord Eustace Percy and the Marquess of Zetland. e 110, to leave out paragraph 221.

he amendment, by leave of the Committee, is withdrawn.

t is moved by Sir Samuel Hoare and Mr. Butler. Page 110, line 40, after it.") to insert ("The same principle should apply to matters in which tion or inaction by a Provincial Government within its own exclusive there affects the administration of an exclusively federal subject—that to say, it should be open to the Federal Government to give directions to provincial Government which is so carrying on the administration of a

"provincial subject as to affect prejudicially the efficiency of a federal subject, with a discretionary power in the Governor-General in the last resort to secure the carrying out of such directions through orders issued by him to the Governor ")

The same is agreed to.

Paragraph 221 is again read as amended

The further consideration of paragraph 221 is postponed

Paragraph 222 is again read and postponed.

Paragraph 223 is again read.

It is moved by the Lord Eustace Percy Page 111, line 40, to leave out ("extra-constitutional") and to insert ("supplementary.")

The same is agreed to.

It is moved by Mr Attlee, Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 111, lines 44 to 46, to leave out from ("we") in line 44 to the end of the sentence and to insert ("consider that every effort should be made "to develop a system of inter-Provincial conferences, at which administrative problems common to adjacent areas as well as points of difference may be "discussed and adjusted")

The same is agreed to

It is moved by the Lord Eustace Percy Page 111, line 47, to page 112, line 5, to leave out from (" us,") in line 47, page 111, to the end of the paragraph on page 112 and to insert (" and we draw attention in later paragraphs of our Report (for instance, paragraphs 227, 294 and 296) to a number of matters "on which it is, in our view, important that the Provinces should co-ordinate "their policy, in addition to the financial problem which we discuss in paragraph 259 It is obvious that, if departments or institutions of co-"ordination and research are to be maintained at the Centre in such matters "as agriculture, forestry, irrigation, education and public health, and if such " institutions are to be able to rely on appropriations of public funds sufficient "to enable them to carry on their work, the joint interest of the Provincial "Governments in them must be expressed in some regular and recognised "machinery of inter-Governmental consultation Moreover, we think that "it will be of vital importance to establish some such machinery at the very "outset of the working of the new constitution, since it is precisely at that "moment that institutions of this kind may be in most danger of falling "between two stools through failing to enlist the active interest either of the "Federal or the Provincial Governments, both of whom will have many "other more immediate preoccupations There is, however, much to be said "for the view that, though some such machinery may be established at the "outset, it cannot be expected to take its final form at that time, and that "Indian opinion will be better able to form a considered judgment as to the "final form which it should take after some experience in the working of the "new constitution For this reason we doubt whether it would be desirable " to fix the constitution of an inter-Provincial Council by statutory provisions "in the Constitution Act, but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial "Autonomy provisions of the Constitution come into operation. We think "further that, although the Constitution Act should not itself prescribe "the machinery for this purpose, it should empower His Majesty's Government "to regulate the working of such co-ordinating machinery as it may have "been found desirable to establish, in order that at the appropriate time means may thus be available for placing these matters upon a more formal " basis ")

The same is agreed to.

Paragraph 223 is again read as amended.

The further consideration of paragraph 223 is postponed.

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Paragraphs 224 to 227 are again read and postponed.

The Appendix (II) is again read.

It is moved by Mr Cocks, Mr Attlee, Mr Morgan Jones, and the Lord Snell Pages 114-116, to leave out from the beginning of the Appendix, page 114, to the end of line 11, page 116

The amendment, by leave of the Committee, is withdrawn.

The Appendix (II) is again read.

The further consideration of Appendix (II) is postponed

The Appendix (III) is again read and postponed.

Paragraphs 228 and 229 are again read and postponed

Paragraph 230 is again read,

It is moved by Sir Reginald Craddock Page 130, line 24, at the end to insert —("On the other hand there are certain laws which come within the "description of the great Indian Codes and have all been enacted by the "Central Legislature They have been in force throughout India for long periods, in one case extending to seventy-five years. Some of these Acts "have scarcely been amended at all, others have been substantially revised," but in all cases after the fullest consultation with the Provincial Governments, "High Courts, Judicial and Executive Authorities and various Associations "most concerned with their subject matter. In this category may be included—

- "The Indian Penal Code.
- "The Codes of Criminal and Civil Procedure.
- "The Indian Evidence Act
- "The Indian Contract Act
- "The Indian Limitation Act
- "The Indian Registration Act
- "The Land Acquisition Act
- "The Negotiable Instruments Act

"Some of these Acts confer rule-making powers upon Local Governments, where it is considered advisable to provide for local differences, but in all sessential particulars they lay down principles applicable to the whole of India. We would therefore reserve these Acts to the Centre with the proviso that the Provincial Governments may only introduce amending legislation with the prior approval of the Governor-General. The interpretation of all these enactments has formed the subject of rulings of the various High Courts which are followed throughout India and constitute throughout the country the well-defined rights and obligations which are accepted and understood by large sections of the people, not excluding the more intelligent of the rural population.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 230 is again read.

The further consideration of paragraph 230 is postponed.

Paragraph 231 is again read and postponed.

Paragraph 232 is again read.

It is moved by the Lord Eustace Percy. Page 130, lines 44 and 45, to leave out from ("residue") in line 44 to the end of the sentence.

The same is agreed to.

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It is moved by the Lord Eustace Percy. Page 131, lines 1 to 5, to leave out from ("elsewhere,") in line 1 to the end of the sentence, and to insert ("the method adopted in the White Paper has one definite constitutional advantage, apart from its virtues as a compromise between two sharply opposing schools of thought in India.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 131, line 29, to leave out ("involves") and to insert ("would involve not only the reservation to the "Federal Legislature of a generally defined overriding power, but also"). The same is agreed to.

Paragraph 232 is again read as amended.

The further consideration of paragraph 232 is postponed,

Paragraph 233 is again read and postponed.

Paragraph 234 is again read.

It is moved by the Lord Eustace Percy. Page 133, lines 11 to 21, leave out from ("concerned.") in line 11 to ("At") in line 21.

The same is agreed to.

Paragraph 234 is again read as amended.

The further consideration of paragraph 234 is postponed.

Paragraphs 235 to 238 are again read and postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 135, after paragraph 238 to insert the following new paragraph:—

("238A. We think it right to take this opportunity of drawing attention to the control of Railway Police as settled by the distribution of subjects. Railway Police in India is at present classified as a provincial subject, but the Central Government retains, under the existing Devolution Rules, the power to determine conditions as regards limits of jurisdiction and contributions by the Railways to the cost of maintenance. We are informed that for many years past the question of the allocation of the cost of the Railway Police between the provincial Governments on the one hand and the Railways on the other has been a subject of controversy, and we have considered the best means o avoiding, or at all events mitigating, such controversies under the nev Constitution. One course, which has the obvious attractions of theoretic: simplicity, would be to make the policing of the Railways, along with the general control of Railways, an exclusively federal subject, thereb making the Federal Government solely responsible for the control the administration, and for the financing of the whole of the Railway Police. We are satisfied, however, that such an arrangement, which would reverse a practice of many years standing, would gravely prejudice the efficiency not merely of the Railway Police but of the Provincisl Police as well. It is essential that the regular Police Force of a Province should act in close co-operation with the separately organised Railway Police and that both should be subordinate to the same Inspector-General. This result could not be secured if the control of the two bodies were in separate hands. We feel no doubt, therefore, that the right solution is to classify Railway Police as an exclusively provincial subject, that the Railway Police Force of each Province should be financed in the main from provincial revenues, but that there should be as at present a contribution from the Federal Government to the Provinces, which would, in fact, consist of the appropriate contribution from the Railways, and the amount of which would necessarily have

to be determined by the Federal Government But, although the administration of the Railway Police Force itself would thus remain an exclusive responsibility of the Provinces, it is clear that inefficiency or madequacy of strength in the Railway Police would at once affect the administration of the federal subject of Railways, and we are satisfied that the recommendations which we have made elsewhere would secure to the Federal Government adequate means of ensuring that the effective administration of the federal subject of Railways did not suffer through madequacy or mefficiency on the part of the Railway Police The Federal Government would be entitled, if it felt called upon to do so, to direct any or all of the provincial Governments so to order its Railway Police as to bring them up to the requisite standard of efficiency, and there would be an ultimate right residing in the Governor-General, at his discretion, in case directions from his Government to any or all of the Provincial Governments on the subject of the administration, the efficiency or the strength of the Railway Police were not complied with, to give the necessary orders to the Governor, which the latter in virtue of his special responsibility to secure the execution of orders lawfully issued by the Governor-General, would be in a position to get executed both administratively and so far as supply was concerned. The position is different in the States, where for the most part jurisdiction over railway lands has been ceded to the Crown and is exercised either through Police specially appointed for that purpose or through the agency of Provincial Railway Police In cases where railway jurisdiction has been retained and is exercised by the State the proposals in the White Paper defining the administrative relations between the Federal Government and the States provide the Governor-General with an appropriate corresponding power to secure the same result as that to be secured under our proposal in the Provinces')

The same is agreed to

New Paragraph 238A is again read

The further consideration of paragraph 238A is postponed.

It is moved by Mr Cocks, Mr Morgan Jones, and the Lord Snell Page 135, after paragraph 238A, to insert the following new paragraph -

( 238B It is proposed in the White Paper that such subjects as Health Insurance and Invalid and Old Age Pensions should be subjects of Provincial Legislation We see serious objection to this, and consider that they should be included in the Concurrent List While it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural, it is undesirable to exclude the possibility of All-India. legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should be burdened with obligations not imposed in another Wr N M Joshi, in the Memorandum submitted by him, argued that social insurance should also be included in the list of Federal subjects, but here, again, we consider it would be better that it should be in the concurrent list. We consider that in order to obtain an All-India (ode of Labour and social legislation it is necessary that the Federal Legislature should have power to pass legislation imposing financial liabilities on the Provincial Governments, but that where this is done grants-in-aid from Federal revenues should be paid to the Provinces and also to such Indian States as are prepared to put in force such legislation. It should, in our view, follow that there should be a central inspection and a measure of control, wherever

<sup>1</sup> Supra paras 218-221

White Paper proposal, para. 129.

such grants are made We consider that there seems much to be said for utilizing the machinery of adoptive Acts as used in Great Britain in connection with Local Government legislation. We have to endeavour to steer a course between delay caused by the difficulty of getting less advanced Provinces to agree to such legislation, and the possibility of friction in such matters as factory legislation as between Province and Provinces and the States. The mechanism of the adoptive Act supported by grants in aid in return for inspection seems to us unobjectionable in theory and useful in practice.")

Objected to

On Question —

Contents (3).

Lord Snell. Mr Cocks. Mr Morgan Jones.

Not Contents (18) Lord Archbishop of Canterbury. Marquess of Salisbury Marquess of Zetland Marquess of Linlithgow Marquess of Reading Earl Peel Viscount Halifax Lord Middleton Lord Ker (M Lothian). Lord Rankellour Lord Hutchison of Montrose. Mr Butler Major Cadogan Sir Reginald Craddock Mr Davidson Mr Foot Sir Samuel Hoare, Sir John Wardlaw Milne

The Lord Eustace Percy did not vote

The said amendment is disagreed to

Paragraphs 239 and 240 are again read and postponed

The Revised lists are again read and postponed

Paragraphs 241 and 242 are again read and postponed

Paragraph 243 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 146, line 32, at end to insert ('But the resources of the Centre comprise those which should 'prove most capable of expansion in a period of normal progress'')

The same is agreed to

Paragraph 243 is again read as amended

The further consideration of paragraph 243 is postponed

Paragraph 244 is again read

It is moved by the Lord Eustace Percy Page 147, lines 2 to 6, to leave out from the beginning of line 2 to the end of the paragraph

The same is agreed to

Paragraph 244 is again read as amended

The further consideration of paragraph 244 is postponed

Paragraph 245 is again read.

It is moved by the Lord Eustace Percy. Page 147, line 7, to leave out from the beginning of line 7 to the end of line 13 and to insert ("The Provincial from the beginning of this collection added impetus by the attitude of the "States in the matter of direct taxation. They have made it plain that, "while they are prepared to concede to the Federal Government the same "rights of indirect taxation in the States as it will possess in British India, "they are not prepared to concede to it the right to impose taxes on income "they are not prepared to conteste to to believe anomaly. Its practical effect "on Federal finances is not, indeed, at the present moment very great." Indirect taxation constitutes some four-fifths of the Central revenues, and "the yield of an income tax imposed on the States would, in all probability, "the yield of an income tax imposes on vious theoretical difficulty in treating " be low. It does, nowever, create an outline as predominantly in treating income tax imposed on British India alone as predominantly a Federal tax. "While we are on this subject, however, it is only right to recognise that, "if the entry of the States creates one anomaly, it removes another very " serious one .")

The further consideration of the said amendment is postponed till to-morrow. The further consideration of Paragraph 245 is postponed till to-morrow. Ordered that the Committee be adjourned till to-morrow at half-past

Ten o'clock,

### Die Martis 10° Julii 1984

## Present:

LORD ARCHBISHOP OF CANTERBURY.
LORD CHANCELLOR.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MINDLETON.
LORD KER (AI. LOTHIAN).
LORD RANKELLOUR.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTAGE PERCY.
SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 245 is again considered.

The motion of the Lord Eustace Percy. Page 147, line 7, to leave out from the beginning of line 7 to the end of line 13 and to insert ("The "Provincial claim to income tax has been given added impetus by the "attitude of the States in the matter of direct taxation. They have "made it plain that, while they are prepared to concede to the Federal Government the same rights of indirect taxation in the States as it will "possess in British India, they are not prepared to concede to it the right to "impose taxes on income within their territories. This is an obvious anomaly." Its practical effect on Federal finances is not, indeed, at the present moment "very great. Indirect taxation constitutes some four-fifths of the Central revenues, and the yield of an income tax imposed on the States would, in all probability, be low. It does, however, create an obvious theoretical difficulty in treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre"Journanthy a Treating income tax imposed on British India alone as pre-

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 147, lines 27 to 39, leave out from ("disappears.") in line 27 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 245 is again read.

The further consideration of paragraph 245 is postponed.

Paragraph 246 is again read and postponed.

Paragraph 247 is again read.

It is moved by the Lord Eustace Percy. Page 148, lines 22 to 25, to leave out from (" alone: ") in line 22 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

All amendments are to the Draft Report (vide infra paras. 1-42B, pp. 470-491; and vide supra paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part 1).

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 247 is again read.

The further consideration of paragraph 247 is postponed

Paragraphs 248 and 249 are again read and postponed

Paragraph 250 is again read

It is moved by the Earl Peel Page 149, hine 41, to leave out ("even as an "ultimate objective").

The same is agreed to.

It is moved by the Lord Eustace Percy Page 150, line 6, at the end to insert ("If a lower and an upper limit is to be fixed in the constitution for "the proportion of income tax to be allocated to the Provinces, we suggest "that the lower limit should be 50 per cent, including the subsidies to the "deficit Provinces, while the upper limit should be 50 per cent, excluding "those subsidies")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 250 is again read as amended

The further consideration of paragraph 250 is postponed

Paragraphs 251 and 252 are again read and postponed.

Paragraph 253 is again read.

It is moved by the Lord Eustace Percy Page 150, line 29, after ("complexity") to insert: ("and we do not think that it is part of our duty to suggest a detailed scheme,").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr Butler After the said amendment to insert ("beyond commending for consideration the general "principle that the share of each Province should be determined primarily by the proportionate amount contributed by its taxpayers in respect of income-tax.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy Page 150, lines 30 and 31, to leave out from ("approach,") in line 30 to the end of the paragraph and to insert ("on the assumption that an automatic basis of distribution can be fixed. "The validity of this assumption will largely depend upon the amount of "income tax which can be allocated to the Provinces at any given time")

The same is agreed to.

Paragraph 253 is again read as amended

The nurther consideration of paragraph 253 is postponed

Paragraph 254 is again read.

It is moved by Sir Samuel Hoare and Mr Butler Page 150, lines 42 and 43, to leave out from ("contribution") in line 42 to the end of the paragraph and to insert ("We appreciate the desire of the States for this "measure of elasticity and feel bound to accept it, though we must observe "that the details of the arrangement with the States seem likely to be "complex and that the adoption of the alternative procedure is economically undesirable")

The same is agreed to

It is moved by the Lord Eustace Percy After the said amendment to insert ("The question of the corporation tax is a difficult one, not only because of the complexity of these arrangements with the States, but also because commercial opinion, both Indian and English is, we understand, strongly opposed to the tax in principle We do not, however, feel that it

" is our duty to express an opinion on the taxation policy of the Government of India. We, therefore, confine ourselves to the remark that, if a tax of

"this kind is to be levied at all, it is obviously most desirable that it should be levied generally on all companies, both in British India and in the "States."

The amendment, by leave of the Committee, is withdrawn.

Paragraph 254 is again read as amended.

The further consideration of paragraph 254 is postponed,

Paragraph 255 is again read.

The Lord Eustace Percy. Page 151, lines 16 to 18, to leave out from ("completed.") in line 16 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 255 is again read.

The further consideration of paragraph 255 is postponed.

It is moved by the Lord Eustace Percy. Page 151, after paragraph 255 to insert the following new paragraph:

("255A. The White Paper proposes that the Provinces should have exclusive power to impose taxes on agricultural incomes, which are not at present subject to income tax. We approve this proposal.")

The same is agreed to.

New Paragraph 255A is read.

The further consideration of paragraph 255A is postponed.

Paragraph 256 is again read and postponed.

Paragraph 257 is again read.

It is moved by the Lord Eustace Percy. Page 152, line 20, at the end to insert ("A claim has also been made by Assam to a share in the proceeds of "the excise duty on petroleum. It is certain that Assam urgently needs an "assured increase in its revenue, but the question in what form this need is "to be met, whether by fixed subvention or by assignment of revenues, is a "matter of fiscal administration on which we do not feel called upon to "express an opinion."

The same is agreed to.

Paragraph 257 is again read as amended.

The further consideration of paragraph 257 is postponed.

Paragraph 258 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 152, lines 21 to 23 to leave out from ("taxes") in line 21 to ("in") in line 23 and to insert ("(of which Stamp Duties are the only ones at present imposed, though "there may be a limited scope in the near future for Railway terminal "taxes)").

The same is agreed to.

Paragraph 258 is again read as amended.

The further consideration of paragraph 258 is postponed.

Paragraph 259 is again read.

It is moved by the Lord Eustace Percy. Page 153, lines 7 to 13, to leave out from ("governments,") in line 7 to the end of the paragraph, and to inser

"We have already given our reasons for thinking that it is undesirable to include in the Constitution Act statutory provisions in regard to an inter-Provincial Council. Clearly, if it should prove impossible, at any rate in the early years of the Federation, to devise an automatic basis for the distribution of income tax to the Provinces, some form of consultation between the Governor-General and the Provincial Governments as to the methods of distribution will have to be devised; but in that event the point can, if necessary, be met by the Order-in-Council procedure which we have already suggested.")

The same is agreed to.

Paragraph 259 is again read as amended.

The further consideration of paragraph 259 is postponed.

Paragraph 260 is again read and postponed.

It is moved by Mr. Butler and Sir Samuel Hoare. After paragraph 260 to nsert the following new paragraph:—

(" 260A, It will be convenient to refer here to the power which the States already possess to impose customs duties on their land frontiers. It is greatly to be desired that States adhering to the Federation like the Provinces, should accept the principle of internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties levied at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal customs duties, but in many of the smaller States are often more akin to octroi and terminal taxes than to customs. In some of the larger States the right to impose these duties is specifically limited by treaty. We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed federation and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The charge must, of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their " tariffs " and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion in Paragraph 129 of the White Paper would have to be brought to bear upon the States.")

The same is agreed to.

New Paragraph 260A is again read.

The further consideration of paragraph 260A is postponed.

Paragraphs 261 to 264 are again read and postponed.

Paragraph 265 is again read.

It is moved by the Lord Eustace Percy. Page 155, lines 14 to 20, to leave out from the beginning of line 14 to (" the ") in line 20, and to insert. (" Similar considerations arise in.")

The same is agreed to.

Paragraph 265 is again read, as amended

The further consideration of paragraph 265 is postponed

It is moved by the Lord Eustace Percy Page 155, after paragraph 265, to insert the following new paragraph —

("265A The subventions to other deficit Provinces also react on federal finance, but these would have been necessary before long under the existing Constitution, since it is clearly impossible to allow the continued accumulation of deficits by a Province, if over a number of years it is beyond its power within the resources assigned to it to balance its expenditure and revenue. The subvention to the North-West Frontier Province has already been granted, and the claim of Assam to an increase in its revenues has for some time been recognised as one which the Central Government must meet in some form."

The same is agreed to

New Paragraph 265A 15 read.

The further consideration of paragraph 265A is postponed.

Paragraph 266 is again read and postponed.

Paragraph 267 is again read.

It is moved by Mr Morgan Jones, Mr Attlee, and Mr. Cocks. Page 156, hine 4, after ("Centre") to insert ("It is a vital necessity that the strictest "economy should be observed wherever it is possible, without detracting from "the nation-building services. We would suggest that the most fruitful "fields for the practice of this economy would be (a) in the Army expenditure, "(b) in the transfer at as early a date as possible of the terms of future recruitment, pay, etc., of the services to the Governments in India, and (c) in "having single-Chamber Government, both for the Federation and the "Provinces.")

Objected to

On Question -

Contents (3).

Mr. Attlee. Mr Cocks.

Mr. Morgan Jones.

Not Contents (19).

Marquess of Salisbury. Marquess of Zetland. Marquess of Linhthgow. Marquess of Reading. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Middleton. Lord Kei (M. Lothian). Lord Rankellour Mr Butler Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson Sir Samue' Hoare. Sir Joseph Nall. Lord Eustace Percy. Sir John Wardlaw-Milne.

The said amendment is disagreed to.

Paragraph 267 is again read.

The further consideration of paragraph 267 is postponed.

Paragraph 268 is again read and postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock.

## Die Mereurii 11° Julii 1984

### Present :

Marquess of Salisbury.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl of Lytton.
Earl Peel.

EARL PEEL. VISCOUNT HALIFAX, LORD MIDDLETON, LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST. LORD SNELL,

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. Attlee. Mr. Butler. Major Cadogan.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK

Mr. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE, MR. MORGAN JONES, LORD EUSTACE PERCY. SIR JOHN WAROLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Yesterday are read.

Paragraph 269 is again re ..

It is moved by the Lord Ker (M. Lothian). Page 157, line 4, after ("consideration") to insert ("The system of responsible government, to be successful in practical working, requires the existence of a competent and independent Civil Service staffed by persons capable of giving advice to successive ministries, based on long administrative experience, secure in their positions during good behaviour, but required to carry out the policy upon which the Government and the legislatures eventually decide.")

The same is agreed to.

Paragraph 269 is again read as amended.

The further consideration of paragraph 269 is postponed.

Paragraph 270 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 157, lines 30 to 32, to leave out from (" man ") in line 30 to (" not ") in line 32 and to insert (" whether British or Indian. Parliament may, therefore, rightly "require, in the interests of India as well as of this country.")

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 157, line 34, at the end to insert ("It is, indeed, the interests of India that must be considered above all. The difficulties of the new Constitution will be aggravated in every respect if the administrative machinery is not thoroughly sound. One of the strongest supports of the new Governments and their new Ministers that we can recommend, and that the Constitution can provide for, will be impartial, efficient and upright Services in every grade and department. It has been impressed on us from various responsible sources, mainly Indian, that the success of the transfer of local self-governing bodies to non-official hands has been jeopardised by the lack of the strong and adequate staff, both inspecting and administrative, required by the new heads of such bodies, when they took over their duties from experienced officials. Whether or not these criticisms are justified, they indicate the obvious danger, in the larger sphere of provincial government, which would follow from any deterioration in the Services.").

The same is agreed to.

All amendments are to the Draft Report (vide infra paras, 1-42B, pp. 470-491; and vide supra paras, 48-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part I).

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 270 is again read as amended.

The further consideration of paragraph 270 is postponed.

Paragraphs 271 to 278 are again read and postponed.

Paragraph 279 is again read.

The following amendment is laid before the Committee.

Sir Samuel Hoare and Mr. Butler to move. Page 160, line 7, after (" the ") to insert (" principal ").

The consideration of the said amendment is postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, lines 1-8, to leave out from the heginning of the paragraph to ("are") in line 8 and to insert, ("In addition, the White Paper proposes that there "should be secured to every person in the Public Services at the commence-"ment of the Constitution Act all service rights possessed by him at that "date. The principal existing service rights of officers appointed by the "Secretary of State and of persons appointed by authority other than the "Secretary of State are set out in Parts 1 and 2 respectively of Appendix VII "of the White Paper. Officers appointed by the Secretary of State are also to "have a special right to such compensation for the loss of any existing right as the Secretary of State may consider just and equitable. It may he "observed that some of the existing service rights of officers appointed by the "Secretary of State set out in Part 1 of Appendix VII").

The same is agreed to.

Paragraph 279 is again read, as amended.

The further consideration of paragraph 279 is postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, after paragraph 279 to insert the following new paragraph:—

"(279A. In addition to these rights and safeguards common to all members of the Public Services, it is proposed that, after the commencement of the Act, the Secretary of State, who will continue to make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department, shall regulate the conditions of service of all persons so appointed, and it is intended that the conditions of service thus laid down shall in substance he the same as at present. The power to regulate the conditions of service of officers not appointed by the Secretary of State, on the other hand, has, since 1926, heen delegated to the Government of India in the case of the Central Services and the Provincial Governments in the case of Provincial Services, and the White Paper contains no provision as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act.")

The same is agreed to.

New Paragraph 279A is again read.

The further consideration of paragraph 279A is postponed.

Paragraph 280 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 21, at the heguning of the paragraph to insert ("Further,").

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 23, after (" compensation ") to insert (" to any officer appointed by him"). The same is agreed to

Paragraph 280 is again read, as amended.

The further consideration of paragraph 280 is postponed.

<sup>1</sup> White Paper, Proposal 182.

Paragraphs 281 and 282 are again read and postponed.

Paragraph 283 is again read

It is moved by the Lord Eustace Percy and Major Cadogan Page 161 to leave out paragraph 283 and to insert the following new paragraphs —

("283 While we consider that the White Paper provides adequately for the special protection of members of the Secretary of State's Services, we are not fully saisfied that the status of other members of the Public Services, and of those Services as a whole, has been made sufficiently clear either in the White Paper or in any of the investigations and discussions which have led up to its preparation. We have already discussed in paragraph 89 the measures necessary to safeguard the moral and efficiency of the Police Service, including its subordinate ranks. In paragraphs 321–325 we shall make certain special proposals in regard to judicial appointments. In addition, however, to these special recommendations, we think it our duty to make certain general observations on the future of the Public Services as a whole

"283A It is natural that the process by which, nng recent years, the power to appoint officers in the Provincial Transferred Services and to regulate their conditions of service has been transferred to the Provincial Governments, should have tended to create a false distinction between the status of the All India Services and that of the Provincial Services The tendency has almost inevitably been to regard the Provincial Services as having ceased to be Crown Services, and as having become Services of the Provincial Governments This tendency has been emphasised by the argument, frequently advanced and accepted in the past both by Indians and Englishmen, that Provincial self-government necessarily entails control by the Provincial Government over the appointment of its servants. This argument has no doubt, great logical force, but it runs the risk of distorting one of the accepted principles of the British Constitution, namely that Civil Servants are the servants of the Crown, and that the Legislature should have no control over their appointment or promotion and only a very general control over their conditions of service. Indeed, even the British Cabinet has come to exercise only a very limited control over the Services, control being left very largely to the Prime Minister as, so to speak, the personal adviser of the Crown in regard to all service matters. The same principle applies, of course, equally to the Services recruited by the Secretary of State for India, though this fact has been sometimes obscured by inaccurate references to the control of Parliament over the All-India services whatever misunderstandings may have arisen in the past as to the real status of the Provincial services, there ought to be no doubt as to their status under the new Constitution We have already pointed out that, under that Constitution, all the powers of the Provincial Governments, including the power to recruit public servants and to regulate their conditions of service, will be derived, no longer by devolution from the Government of India, but directly by delegation from the Crown, 28, directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State 5 services, will, therefore, be essentially Crown Services, and the efficiency and moral of those services will largely depend in the future on the development in India of the same conventions as have grown up in England

"283B. But, if such conventions are to develop in India as in England, they must develop from the same starting point—from crecognition that the Governor, as the personal representative of the Crown and the head of the executive government, has a special relation to all the Crown Services. He will, indeed, be generally bound to act in

that relation on the advice of his Vinisters, subject to his special responsibility for the rights and legitimate interests of the Services but his Vinisters will be no less bound to remember that advice on matters affecting the organisation of the permanent executive services is a very different thing from advice on matters of legislative policy, and that the difference may well affect the circumstances and the form in which such advice is tendered. We think, therefore, that the Constitution should contain in its wording a definite recognition of the Governor General and the Governors respectively as under the Crown, the heads of the Central (as distinct from the All India) and Provincial Services and as the appointing authorities for those services. It will follow (see paragraph 277 above) that no public servant will be subject to dismissal, save by order of the Governor-General or Governor.

But, further than this, it will in our view, be essential that the Central and Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services Their status and rights should not be, in substance, inferior to those set out in List I of Appendix VII of the White Paper The rights of persons appointed by the Secretary of State, enumerated in that List, are not peculiar or exceptional, they are simply the lights generally recognised to be essential to the moral of any administrative service They are rights, in the first place, to protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion, and, in the second place, to protection against such alterations in the organisation of the services themselves as might damage the professional prospects of their members generally The special responsibility of the Governor-General and Governors would, in any case, in our judgment, extend to all these points, but it is on all grounds desirable that the Executive Government as a whole should be authorised and required by law to give the Services the necessary security Provincial Civil Service Acts, passed for this purpose, could not, indeed, determine in detail the rates of pay, allowances and pensions, and the conditions of retirement of all Civil Servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure Such Acts could, however, confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide definitely that "canvassing" for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor It is admittedly more difficult to give security to the Services as a whole in respect of their general organisation, yet the moral of any service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance A Legislature does nothing derogatory to its own rights and powers it it confers upon the Executive by law the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance.

'283D There is, however, one existing right of officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non votability of salaries and pensions. There is, indeed, nothing derogatory, again, to the rights and powers of a Legislature in the adoption of a special procedure, similar to the Consolidated Fund procedure of the British Parliament, under which certain expenditures of the Government are authorised en blor by bill instead of being voted in detail on estimates of supply, and this is, in fact, generally recognised to be a desirable

procedure in certain circumstances. But, as we point out below in paragraph 304, in a slightly different connection, this procedure could not, in practice, be applied to the salaries of all public servants. We think, however, that it might well be applied by the Provincial Legislatures to certain classes of officers, including officers exercising judicial functions and the higher grades of all the services. We make this proposal without prejudice to the proposals in the White Paper which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislatures at all.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 283 is again read.

The further consideration of paragraph 283 is postponed.

Paragraph 284 is again read and postponed.

Paragraph 285 is again read.

It is moved by Lord Eustace Percy and Major Cadogan. Page 162, line 23, after (" powers ") to insert (" over the officers who are working under it ").

The same is agreed to.

It is moved by the Lord Enstace Percy and Major Cadogan. rage 162, lines 23 and 24, to leave out from ("autonomous") in line 23 to the end of the sentence and to insert ("Provincial Government might expect that the Crown "should delegate to it.")

The same is agreed to.

Paragraph 285 is again read as amended.

The further consideration of paragraph 285 is postponed.

Paragraph 286 is again read.

It is moved by Sir Reginald Craddock. Page 162, lines 34 to 38, to leave out from the beginning of line 34 to (" are ") in line 38 and to insert "We appreciate the force of this line of argument, though we have already "pointed out the dangerous conclusions which might be drawn from it. "But the loyalty with which officers of the All-India Services have served "the Local Governments under whom they work, notwithstanding that these "Services are under the control of the Government of India and the Secretary " of State, has a long tradition behind it: nor has any Local Government felt. "difficulty in regard to maintaining discipline and securing full obedience of "the Services on account of that control. Moreover, the evidence given "before us confirmed the earlier conclusions of the Lee Commission and of "the Statutory Commission that, with negligible exceptions, the officers of "these Services have maintained excellent relations with the Indian Ministers " under whom they have been working. Subject to certain qualifications to "which we refer hereafter, we are of opinion that recruitment by the Secretary " of State, for the All-India Services, where it still continues, should come to "an end except in the case of the Indian Civil Service and the Indian Police; "the functions performed by members of these two services")

The same is agreed to.

It is moved by Mr. Morgan Jones, Mr. Cocks, and the Lord Snell. Page 162, line 36, to page 163, line 15, to leave out from ("hereafter.") n line 36, page 162, to the end of the paragraph, and to insert ("We fully recognise the "fact that the functions performed by members of the Indian Civil Service "and the Indian Police are essential to the general administration of the "country and the vital need of maintaining a supply of recruits of the "highest quality. But we feel that Indianisation of these services should proceed at a more rapid pace. Meanwhile recruitment to these services "should be by the Governor-General in his discretion, and the control of "conditions of service should be in his hands. We are aware that this "modification of the present practice will be one of form rather than of "substance, since the Governor-General will be acting under the direction of the Secretary of State, but Indian public opinion attaches considerable

"importance to this formal change, and we are satisfied that the psychological effect at this juncture upon the Indian people will be of great value.")

Objected to.

On Question:---

Contents (3)

Lord Snell. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (18)

Marquess of Salisbury. Marquess of Linlithgow. Marquess of Reading. Earl of Derby. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Middleton. Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Sir Samuel Hoare. Lord Eustace Percy. Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Sir Reginald Craddock. Page 162, line 40, after (" vital "), to insert (" to the stability of the new Constitution itself.")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 162, line 42, after ("recruitment") to insert ("for these two Services")

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 163, lines 12 to 15, to leave out from ("but") to the end of the paragraph and to insert ("for that very reason we are reluctant to make a merely formal "change which might at this juncture have an unfortunate effect upon potential recruits.")

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 163, line 15, at the end to insert ("We believe, however, that there is much to be "said for the recruitment in India of the prescribed proportion of Indians" for the Indian Civil Service as well as for the Indian Police and recommend "this as a subject for consideration by His Majesty's Government.")

The same is agreed to.

Paragraph 286 is again read, as amended.

The further consideration of paragraph 286 is postponed.

Paragraph 287 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 163, to leave out paragraph 287 and to insert the following new paragraph —

("287 The White Paper makes it clear that these proposals are not intended to be a permanent and final solution of this difficult question. It proposes, indeed, that, at the expiration of five years from the commencement of the Constitution Act, an enquiry should be held into the question of future recruitment for these two services, the decision on the

<sup>&</sup>lt;sup>1</sup> Officers required for the Indian Medical Service (Civil) will continue to be obtained from the Indian Medical Service, which will still be recruited under military regulations by the Secretary of State.

results of the enquiry (with which it is intended that the Governments in India shall be associated) resting with His Majesty's Government subject to the approval of both Houses of Parliament. We agree with the principle of this proposal. Our aim, as we have already said, is to ensure that the new constitutional machinery shall not be exposed during a critical period to the risks implicit in a change of system: we recognise that the whole matter must be made the subject of a further enquiry in due time. We cannot, however, endorse the proposal to fix a definite date for such an enquiry, or even a date after which the desirability of holding such an enquiry shall be considered. Past experience shows the doubtful wisdom of such a fixing of dates, and w chink that no provision of this kind should be inserted in the Constitution. In our view, a change in the method of recruitment of the All-India services will depend less upon the lapse of any given period of time than upon the extent to which the Provincial Governments find it possible to organise and regulate the Public Services under their control on the lines which we have ventured to suggest above.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Reginald Craddock. Page 163, line 17, to leave out the second (" to ") and to insert (" in some circles of ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, and Mr. Morgan Jones. Page 163, line 29, to page 164, line 1, to leave out from the beginning of line 29, page 163, to ("It") in line 1, page 164.

Objected to.

On Question:—

Contents (3)

Mr. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (16)

Marquess of Linlithgow. Marquess of Reading.

Earl of Derby. Earl Peel.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan.

Sir Reginald Craddock.

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Sir Austen Chamberlain. Page 163, line 39, to leave out ("within") and to insert ("in") and after ("years") to insert ('time")

The same is agreed to.

It is moved by Sir Austen Chamberlain. Page 164, to leave out lines 3 to 10 inclusive.

The same was agreed to.

Paragraph 287 is again read as amended.

The further consideration of paragraph 287 is postponed.

Paragraphs 288 to 294 are again read and postponed.

Paragraph 295 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 166, line 42, after (" Provinces ") to insert (" should lay down jointly the conditions " of service of Forest officers ").

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 166, line 45, to leave out (" and entrust ") and to insert (" entrusting ").

The same is agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 166, line 48, to page 167, line 1, to leave out from ("serve") in line 48, page 166, to ("service") in line 1, page 167.

The same is agreed to.

Paragraph 295 is again read as amended.

The further consideration of paragraph 295 is postponed.

Paragraphs 296 and 297 are again read and postponed.

Paragraph 298 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 168, line 11, after officers") to insert ("both European and Indian").

The same is agreed to.

Paragraph 298 is again read as amended.

The further consideration of paragraph 298 is postponed.

Paragraph 299 is again read and postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 168, after paragraph 299 to insert the following new paragraph:—

("299A Our recommendation that the Forest and Irrigation Services should in future be recruited in India does not, of course, imply that the Federal Public Service Commission, in the case of Forests, and the Provincial Commissions, in the case of Irrigation, should abandon the recruitment of necessary personnel from England. The High Commissioner for India in London already recruits specialist and expert officers of various kinds in England, as the agent of the competent authorities in India, and the Public Services Commissions in India will doubtless continue this practice, or may, for certain purposes, make use of the Civil Service Commission.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 300 to 304 are read and postponed.

Paragraph 305 is again read.

It is moved by the Lord Rankeillour. Page 170, line 14, at the end to sert ("He should, however, have a reserve power of borrowing at his discretion for the purpose of the punctual discharge of statutory obligations.") The amendment, by leave of the Committee, is withdrawn.

The further consideration of paragraph 305 is postponed to Friday next.

Ordered, that the Committee be adjourned to Friday next at half-past o'clock.

### Die Veneris 18° Julii 1984

#### Present

LORD ARCHBISHOP OF CANTERBURY
MARQUESS OF SALISBURY
MARQUESS OF ZITLAND
MARQUESS OF LINLITHGOW
MARQUISS OF READING
EARL OF DERBY
EARL PEEL
VISCOUNT HALIFAX
LORD MIDDLETON
LORD KER (M LOTHIAN)
LORD SELL
LORD RANKEILLOUR
LORD HUTCHISON OF MONTROSE

MR BUTLER
MAJOR CADOGAN
SIR AUSTEN CHAMBERLAIN.
MR COCKS
SIR REGINALD CRADDOCK
MR DAVIDSON
MR FCOT

MR FC'IT
SIR SA LEL HOARE
MR M RGAN JONES
SIR JOSEPH NALL
LORD EUSTACE PERCY
SIR JOHN WARDLAW-MILNE,
EARL WINTERTON

THE MARQUESS OF LINLITHGOW IN the Chair.

The Order of Adjournment is read

The Proceedings of Wednesday last are read.

Paragraph 305 is again considered.

It is moved by Sir Samuel Hoare and Mr Butler Page 170, line 14, at the end to insert ('If need arose for the Governor to take special steps for the "purpose, in virtue of his special responsibilities, it would, of course, be open "to him to adopt whatever means were most appropriate in the circumstances," and, if necessary to meet the situation by borrowing, the powers available to him personally in this respect would be identical with those available to the provincial Government. If he should seek assistance from the Federal "Government in the form of a loan, his application would be governed by "the provision relating to provincial borrowing which we have already advocated")"

The same is agreed to

Paragraph 305 is again read as amended

The further consideration of paragraph 205 is postponed

Paragraph 306 is again read

It is moved by Sir Reginald Craddock Page 170, to leave out paragraph 306 and to insert the following new paragraph —

(' 306 Although as we have said a Governor is equally interested that all classes of officers should receive the emoluments and pensions to which they are entitled, yet his 'special responsibility' is limited to the emoluments and pensions of officers appointed by the Secretary of State We approve the proposal in the White Paper that these pensions should be a charge against the Federal Government direct the necessary adjustments being subsequently made between the Federal Government and Province or Provinces concerned, but the pensioner's method of redress would be by suit against the Secretary of State in London and not against the Federal Government. There is, however, one particular feature about the pensions of the Indian Civil Service which it seems right to mention. While in other All India Services and in the Indian Civil Service up to April, 1919. Until that date every member of that Service

<sup>1</sup> Supra, para 262

All amendments are to the Draft Report (wide infra paras 1-42B, pp 470-491, and wide supra paras 43-453, pp 64-253) and VOT to the Report as published (Vol I, Part 1) A Key is attached (see pp 521-544), showing on which pages of the Proceedings amend ments to each paragraph can be found.

had to make a compulsory contribution of 4 per cent. of his pay towards, the cost of his pension of £1,000 sterling per annum. No separate account of these contributions was ever kept, and they merged in the general revenues of India. The change was made in April, 1919, upon the recommendation of the Islington Commission, and from that time the deduction of 4 per cent. in the case of every officer is credited to his account in a Provident Fund, and the amount standing to his credit is paid to him on the date of his retirement, in rupees, so that officers who entered the Service in or after April, 1919, have not contributed towards their pensions, but the oldest pensioners who retired at or before that time contributed during the whole of their service, while even among officers now serving, those of over 15 years' service were on the contributory system for service prior to 1919. In the absence of any accounts it is impossible to estimate what proportion of an officer's pension was contributed either by himself or by the Service at large. It is also proper to mention that the pensions paid to officers of all the Services, unless they continue an Indian domicile, are not subject to any deduction on account of Indian Income Tax. We think it right that these facts should be mentioned as a reassurance to pensioners.")

The amendment by leave of the Committee is withdrawn.

Paragraph 306 is again read.

The further consideration of paragraph 306 is postponed.

Paragraph 307 is again read.

It is moved by Sir Reginald Craddock. Page 170, to leave out paragraph 307 and to insert the following new paragraph:—

("307. The various Family Pension Funds stand on a different footing from other pensionary obligations of the Government of India. The funds of the Indian Civil Service and the Indian Army have a long history behind them. The Family Pension Funds of the other Services are of recent institution, but all are alike in their nature, viz., that they consist entirely of contributions of the Services to cover provisions for their widows, minor sons and unmarried daughters. The Civil funds were started in the days of the East India Company and were three in number, Madras, Bombay and Bengal. They were managed by special Committees of the Services and invested by them in various Government of India Securities, some of which in those days used to pay as much as 8 per cent. Between the years 1874 and 1882, as a result of long negotiations between the Secretary of State and the Committees administering the funds, the whole of the accumulated funds were handed over to the Secretary of State, the transaction receiving effect by Acts of Parliament. The Secretary of State under these Acts undertook the obligation of paying pensions to widows and orphans at fixed rates which varied according to the amount of the funds accumulated by the three Presidencies in question. The subscribers to those Funds continued to pay the appointed contributions for the remainder of their services; indeed, for a long time contributions were contributed by officers even after their retirement. With effect from 1882, all officers who joined the Service became compulsory contributors to a new I.C.S. Family Pension Fund which took the place of the three Funds which the Secretary of State had taken over. At the time that all these contracts were made and legalised by Acts of Parliament the guarantees were ample, for there was then no question of any relaxation by the Secretary of State over the finances of India. Since the Montagu Announcement there has arisen alarm and anxiety regarding the security of these pensions, for the recipients may still be dependent upon them for a period which in some cases may extend to the end of this century.

"We understand that as regards the old Madras, Bombay and Bengal funds, not even pro forma accounts have been kept. The obligations of the Government of India and of the Secretary of State being absolute since the accumulations of those funds were made over to the Government of India on the condition that the Government and the Secretary of State would pay pensions at the agreed rates up to the last survivor

"In the case of the ICS Family Pension Fund created in 1882 pro forma accounts have been kept up, and the position of these funds is periodically reviewed by an Actuary appointed by the Secretary of State, and with reference to the assets available, pensions to widows and orphans have been raised permanently to some extent and with temporary additions which are conditional on the assets available being sufficient These pensioners now desire that the assets of the ICS Family Pension Fund should be remitted to this country and invested in sterling securities The Secretary of State has, we understand, addressed all those interested either as contributors to the Funds or as recipients of pension from it, asking their approval for a scheme under which the remittance to this country of these finds would be effected over a period The Secretary of State has informed us that His Majesty's Government will undertake no guarantee in the matter on the ground that under the new Constitution payment of these obligations by the Government of India will be secured by the Secretary of State and that therefore there is no case for a guarantee by His Majesty's Government We cannot overlook, however, the fact that the whole of these contributions have been absorbed in the Indian Revenue, and that the interest on these contributions has never been included in the interest charges of the financial statements of the Indian Government It is not known now exactly what form the new Constitution will take, much less can the future developments be forefold. The anxiety felt by the beneficiaries is very genuine, and we suggest that His Majesty's Government might at least guarantee the payment each year of the pensions due pending their collection by the Secretary of State from the Indian Revenues This guarantee would naturally cease to have effect as soon as the assets of the Fund have been remitted to this country and invested in sterling If His Majesty's Government and the Secretary of State are correct in their view that the control retained by the Secretary of State over Indian finances will suffice to secure this money, then the contingent hability incurred by His Majesty's Government will be comparatively small and merely temporary")

The following amendment is laid before the Committee

The Lord Hutchison of Montrose on behalf of the Lord Hardinge of Penshurst to move as an amendment to the above amendment, to leave out the last sentence of the amendment and to insert ("We are strongly of opinion that in any case the period of 15 years preposed by the "Secretary of State for the remutance to this country of the Family Pension Funds should be reduced to a term of 10 years")

The consideration of the said amendment is postponed

The original amendment, by leave of the Committee, is withdrawn

It is moved by the Lord Hutchison of Montrose on behalf of the Lord Hardinge of Penshurst Page 170, line 39, after ("made") to insert ("and that steps should be taken to meet their views and to complete the transfer of the funds from India within a period of twelve years from the passage of the Constitution into law")

The same is agreed to

Paragraph 307 is again read as amended

The further consideration of paragraph 307 is postponed.

Paragraph 308 is again read.

It is moved by the Lord Hutchison of Montrose. Page 171, lines 8 to 23, to leave out from ("Services;") in line 8 to the end of the paragraph, and to insert ("and we have noted with satisfaction the resolution of the Home Department of the Government of India, dated July 4, announcing new rules for the determination and improvement of the representation of minorities in the Public Services. In accordance with this resolution the claims of Anglo-Indians and domiciled Europeans who at present obtain rather more than 9 per cent. of the Indian vacancies in the gazetted railway posts, for which recruitment is made on an all-India basis, will be considered when and if their share falls below 9 per cent., while 8 per cent. of the railway subordinate posts filled by direct recruitment will be reserved for Anglo-Indians and domiciled Europeans. We are of opinion that a reference should be included in the Instruments of Instructions of the Governor-General and Governors to the fact that the legitimate interests of minorities include their due representation in the Public Services, and that no change should be made in the percentages prescribed in the above-mentioned resolution without the previous sanction of the Governor-General and the Secretary of State.")

The amenda ent, by leave of the Committee, is withdrawn.

Paragraph 308 is again read.

The further consideration of paragraph 308 is postponed.

Paragraph 309 is again read and postponed.

Paragraph 310 is again read.

The following amendment is laid before the Committee.

Sir John Wardlaw-Milne to move, page 172, lines 34 to 37, to leave out from ("another,") in line 34 to the end of the paragraph.

The consideration of the said amendment is postponed.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 172, lines 31 to 37, to leave out from ("State.") in line 31 to the end of the paragraph.

The same is agreed to.

Paragraph 310 is again read as amended.

The further consideration of paragraph 310 is postponed.

Paragraphs 311 to 315 are again read and postponed.

Paragraph 316 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 175, line 38, after ("would") to insert ("have power to").

The same is disagreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 175, lines 43 and 44, to leave out from ("provide") in line 43 to the end of the paragraph.

Objected to.

On Question --

Contents (8)

Marquess of Salisbury Marquess of Reading Earl of Derby Lord Middleton Lord Ker (M Lothian) Lord Rankellour Sir Reginald Craddock. Sir Joseph Nall.

Not Contents (13)

Lord Archbishop of Canterbury. Marquess of Zetland Marquess of Linlithgow Earl Peel Viscount Halifax Lord Hutchison of Montrose, Mr Butler Major Cadogan Mr Davidson. Sir Samuel Hoare. Lord Eustace Percy. Sir John Wardlaw-Milne Earl Winterton.

Mr Cocks did not vote.

The said amendment is disagreed to.

Paragraph 316 is again read

The further consideration of paragraph 316 is postponed.

Paragraph 317 is again read and postponed

Paragraph 318 is again read

It is moved by the Lord Rankeillour Page 176, line 22, at the beginning of the paragraph to insert ( The constitution of ')

The same is agreed to

It is moved by the Lord Rankeillour Page 176, line 23, to leave out (" are scarcely ") and to insert (" is hardly directly")

The same is agreed to

It is moved by the Lord Hutchison of Montrose Page 176 lines 38 and 39, to leave out from ("Judges,") in line 38 to ("we") in line 39, and to insert ("but we urge the destrability, in the interests of the maintenance of British "legal traditions of continuing for some time the maintenance of British legal traditions, of continuing for some time the recruitment of a certain "number of High Court Judges from the United Kingdom,"), and line 40, after the first ('are') to insert ('also )

The amendments, by leave of the Committee, are withdrawn.

Paragraph 318 is again read, as amended

The further consideration of paragraph 318 is postponed

Paragraph 319 is again read.

It is moved by the Lord Rankeillour Page 177, to leave out Paragraph 319 and to insert the following new paragraph -

(" 319 We are at one with the Statutory Commission in thinking that the administrative control of the High Courts should be placed in the hands of the Central Government and that the expenditure required from them, and the receipts from Court fees, should be included in the Central Government's Budget The expenditure should be certified by the Governor-General after consultation with his Ministers and should not be submitted to the vote of the Legislature We also think that the Governor-General should be directed in his Instrument of Instruction to reserve any Bill which in his opinion would unduly derogate from the powers of the High Court ")

Objected to.

On question :-

Contents (4).

Marquess of Salisbury. Lord Rankeillour. Sir Joseph Nall. Lord Eustace Percy. Not Contents (15).

Lord Archbishop of Canterbury.
Marquess of Zetland
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl Peel.
Viscount Halifax.
Lord Ker (M. Lothian).
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Mr. Cocks.
Mr. Davidson.
Sir Samuel Hoare.
Sir John Wardlaw-Milne.

Sir Reginald Craddock did not vote.

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy. Page 177, line 15, after ("Courts.") insert ("It is largely for this reason that strong representations have been made to us to the effect that control over the High Courts should be vested in the Federal Government. After careful consideration, we are unable to accept this view, since we think it might tend to prejudice the close relations between the High Courts and the Provincial Governments which, as will appear from the recommendations we are about to make, it is of the utmost importance to maintain.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 177, line 15, after ("proposes") to insert ("however").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 319 is again read.

The further consideration of paragraph 319 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, after paragraph

19 to insert the following new paragraph:-

("319A. It follows from this recommendation that we are not at one with the Statutory Commission in thinking that the administrative control of the High Courts should be placed in the hands of the Central Government and that the expenditure required for them, and the receipts } from court fees, should be included in the Central Government's budget. We agree entirely with the Commission that the arrangement whereby in consequence of the historical connexion for certain purposes between the Calcutta High Court and the Government of India, decisions as to the strength of that Court and its establishment and as to its financial requirements for buildings or other purposes rest with the Central Government, though the extra expenditure involved by such decisions falls upon the Bengal Government, is an anomaly which ought to be terminated; but, in our view, it should be terminated not by placing financial responsibility for the Calcutta High Court (and incidentally for all other High Courts) upon the shoulders of the Federal Government, but by bringing the Calcutta Court into the same relationship with the Bengal Government as that obtaining between all other High Courts and their respective Provincial Governments. We agree, moreover, most fully with the Commission's view as to the importance of securing for the High Courts a position of independence and the largest possible measure of freedom from pressure exerted for political ends. This object should, we think, be

<sup>1</sup> Report, Vol. II, paragraphs 341-349.

fully secured by the recommendation which we made in the last paragraph But, subject to the fulfilment of this requirement, the High Court 19, in our view, essentially a provincial institution indeed, as subsequent paragraphs show we seek to secure for each High Court an administrative connexion with the Subordinate Judiciary of the Province which we regard as of the highest importance, and which we think could not be maintained—or only in an atmosphere of mistrust and suspicion which would gravely detract from its advantages—if the Court were an outside hody, regarded (as it would probably be) as an appanage of the Federal Government Apart from these reasons which we regard as conclusive, in favour of maintaining the present relationship between the High Courts and the Provincial Governments (subject only to the modification required to hring the Calcutta High Court into the same position as that of the others) we are satisfied that the financial adjustments which would be involved in any attempt to centralise the administration and financing of the High Courts would be of a far more complicated nature than the Commission appear to have supposed ")

The same is agreed to

New Paragraph 319 \( \) is again read

The further consideration of new paragraph 319A is postponed

Paragraph 320 is again read

It is moved by the Lord Rankeillour Page 177, lines 35 to 44, to leave out from the beginning of line 35 to ("in") in line 44 and to insert (" and ")

The amendment by leave of the Committee, is withdrawn

It is moved by the Lord Rankeillour Page 177, line 45 to leave out from ("safeguarded") to ('the ")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour Page 177, line 46, to leave out ("not")

The amendment by leave of the Committee, is withdrawn

It is moved by the Lord Rankeillour Page 177, line 50, at the end to insert (We think that it is also of great importance that the powers of the "High Courts referred to in Record III of our proceedings (Paragraphs 12" and 13) should be defined and confirmed by the Constitution Act even "where at present they rest on the authority of the Provincial Government")

The same is agreed to

Paragraph 320 is again read, as amended

The further consideration of paragraph 320 is postponed

It is moved by Sir Samuel Hoare and Mr Butler Page 177, after paragraph 320 to insert the following new paragraph —

( 320 A We think it desirable to explain the general effect of our recommendations upon the provincial High Courts. Their constitution will, as at present, he laid down in the Constitution Act and the appointments to their will remain with the Crown—the Constitution Act will moreover itself regulate more precisely than at present the nature and extent of the superintendence to be exercised by a High Court over the Subordinate Courts of the Province—the nature and extent, in fact of what may be described as their administrative jurisdiction. No change will be made in their relations with the Provinces in regard to the administrative questions affecting their establishment and buildings, except that the Calcutta High Court will henceforth have relations in these respects with the Bengal Government direct and not, as at present, with the Central Government (which, even as matters stand, naturally consults the Bengal Government upon any proposals made before it by the Court

but the supply required by the High Court will be determined by the Governor after consultation with his Ministers, and will not be subject to the vote of the provincial Legislature. As regards the juridical jurisdiction of the High Courts, insofar as this depends—as it mainly does depend-upon provisions of Indian enactments, it will henceforth be determined by enactments of that Legislature which is competent to regulate the subject in respect of which questions of the High Court's jurisdiction arise: that is to say, it will be for the Federal Legislature alone to determine the jurisdiction of the High Court in respect of any matter upon which that Legislature has exclusive power to legislate, for the provincial Legislature to determine the jurisdiction of its High Court in respect of any exclusively Provincial Subject, and for both to determine (subject to the principles governing legislation in the concurrent field) in respect of any matter on which both Legislatures are competent to legislate. It will thus be seen that the High Courts, under our proposals, will be institutions which will not accurately be describable as either federalised or provincialised. They will form an integral part of the constitutional machinery and the various aspects of their activities as such will be regulated by the authority appropriate for the purpose.")

The same is agreed to.

New paragraph 320A is again read.

The further consideration of paragraph 320A is postponed,

Paragraphs 321 and 322 are again read and postponed.

Paragraph 323 is again read.

It is moved by the Lord Rankeillour. Page 179, lines 2 to 4. Leave out from ("Court") in line 2 to the end of the sentence.

The same is diargreed to.

Paragraph 323 is again read.

The further consideration of paragraph 323 is postponed.

Ordered, That the Committee be adjourned to Monday next at half-past Four o'clock.

# Die Lunse 16° Julii 1934

#### Present

LORD ARCHBISHOP OF CANTERBURY. Mr. ATTLEE MARQUESS OF SALISBURY MR BUTLER MARQUESS OF ZETLAND MARQUESS OF LINLITHGOW. MARQUESS OF READING EARL OF DERBY EARL PEEL VISCOUNT HALIFAX LORD MIDDLETON LORD KER (M LOTHIAN) LORD SNELL LORD RANKEILLOUR LORD HUTCHISON OF MONTROSE. EARL WINTERTON

MAJOR CADOGAN SIR AUSTEN CHAMBERLAIN MR COCKS SIR REGINALD CRADDOCK MR DAVIDSON MR FOOT SIR SAMUEL HOARE MR MORGAN JONES SIR JOSEPH NALL LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLITHGOW in the Chair

The Order of Adjournment is read The Proceedings of Friday last are read Paragraphs 324 to 453 are again postponed Paragraphs 1 to 86 are again postponed

Paragraph 87 is again read as amended

It is moved by the Marquess of Linlithgow Paragraph 87, page 41, line 20, to leave out from ('Minister") in line 20 to the end of the paragraph (1 c., to leave out amendment inserted on the 25th June) and to insert (" If, therefore, the transfer is to be made, as we think it should, it is essential "that the Force should be protected so far as possible against these risks, "and in the following paragraphs we make recommendations designed to " secure thus protection ")

The same is agreed to

Paragraph 87 is again read as amended.

The further consideration of paragraph 87 is postponed

Paragraphs 88 to 92 are again considered

The motion of the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy. Paragraph 90, page 43, hne 11, after ('reconstitute'') to meert ("The problem is a difficult one and, though, at the moment, it is perhaps only of immediate importance in the Province of Pengal and to a " lesser extent in the provinces which border on Bengal, terrorism and " revolutionary conspiracy have not been confined to those territories, "nor consequently is the necessity for efficient counter-revolutionary "measures limited to them Bengal, however, as has been proved " to us by the evidence we have received, has a particularly long and "disquieting record of murder and outrage, of which Indians and "Europeans have equally been the victims" It has also shown in a " marked degree a rise or fall in such terrorist crime according as the "hands of the authorities have been weakened or strengthened, and "as precautionary and special measures have been relaxed or " enforced ") is again considered.

The further consideration of the said amendment is postponed

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp 470-491; and vide supra, paras 43-453, pp 64-253) and NOT to the Report as published (Vol. I, Part I)

A Key is attached (see pp 521-544), showing on which pages of the Proceedings amend ments to each paragraph can be found

The tollowing amendments to paragraphs 90 to 92 are again laid before the Committee :--

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshnrst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy to move. Paragraph 91, page 43, lines 12 and 13, to leave out lines 12 and 13 inclusive.

The Lord Hutchison of Montrose and Sir Austen Chamberlain to move. Paragraph 91, page 43, lines 28 and 29, to leave out from ("that") in line 28 to ("and") in line 29 and to insert ("the practice" is that in a secret service case the names of agents are not disclosed to "Ministers").

Sir John Wardlaw-Milne to move. Paragraph 91, page 43, Line 33, to leave out from ("order,") to the end of the line and to insert ("must be understood as themselves adopting").

The Earl of Lytton to move. Paragraph 91, page 43, lines 36 to 38, to leave out from the second ("agents") in line 36 to the end of the sentence and to insert ("themselves would not feel secure that their identity might not be revealed").

The Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy to move. Paragraph 92, pages 43 and 44, leave out paragraph 92 and to insert the following new paragraph:—

("92. In the circumstances set out above we are convinced that it should be made plain that the control of the organisation which exists, or may hereafter exist, for the purpose of combating the terrorist movement, is in the hands of the Governor-General at the centre and of the Governors in the provinces. To secure the object which we have in view, we recommend that the Central Intelligence Bureau be placed under the control of the Governor-General, as part of the Political and Foreign Department, and that in any province in which a special branch of the Police force exists or may hereafter be brought into being, the Inspector-General shall take his orders direct from the Governor as the agent of the Governor-General in all matters affecting the work of the special branch in whatever branch of police administration such matters may arise. We realise that in such circumstances, the Minister in charge of the portfolio of Law and Order might be unwilling to answer in the Legislature for action taken on the initiative of the Governor, and in that event we recommend that it shall be open to the Governor to appoint some person selected at his discretion to act as his spokesman in the Legislature").

The Earl of Lytton to move. Paragraph 92, pages 43 and 44, to leave out paragraph 92 and to insert the following new paragraph.

("92. The existence of terrorist crime is a special disease which calls for special treatment. It necessitates departures from the ordinary law and the enactment of special legislation such as the Bengal Criminal Law Amendment Act. The Special Branch is an essential feature of the machinery for combating terrorist activities, and as such we consider that it requires special treatment. We therefore recommend that this small and exceptional service where it exists should be a reserved service responsible to the Governor alone.")

Sir John Wardlaw-Milne to move. Paragraph 92, page 43, line 45, after ("Province") to insert ("(who should continue to have direct access to him)")

Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell to move. Paragraph 92, page 44, lines 10 to 13, to leave out from ("enforced.") in line 10 to ("We") in line 13.

The consideration of the said amendments is postponed.

Paragraphs 88 to 91 are again read as amended.

It is moved by the Marquess of Linkthgow Paragraphs 88 to 91, pages 41 to 44, to leave out paragraphs 88 to 91 as amended and to insert the following new paragraphs —

The Governor's pecsel esponsibility

"88 First, there are the proposals already made in the White Paper The Governor is to have a special responsibility for 'the prevention of any grave menace to the peace or tranquillity of the Province or an' part thereof' The effect of this, as of all other special responsibilities is to enable the Governor, if he thinks that the due discharge of his special responsibility so requires, to reject any proposals of his Ministers of himself to imitate action which his Ministers decline to take Further, there flows from this special responsibility, not only the right to overrule his Ministers, but also special powers—legislative and financial—to enable him to carry into execution any course of action which requires legislative provision or the provision of supply If, therefore, the Governor should he of opinion that the action or inaction of Vinisters is jeopardising the peace or tranquility of the Province, it will be his duty to take action to meet the situation If the situation is one requiring immediate action he will usue any executive order which he may consider necessary the situation is one which cannot be dealt with by an isolated executive order—if the Minister in charge of the Department appears unable to administer his charge on lines which the Governor regards as consistent with the due discharge of his special responsibility—the Governor will dismiss and replace the Minister (and if necessary, the Vinisters as a body, with or without resort to a dissolution of the Legislature) If he fails to find an alternative Government capable of administering Law and Order on lines consistent with the discharge of his special responsibility. he will be obliged to declare a breakdown of the constitution and to assume to himself all such powers as he judges requisite to retrieve the utuation We are not contemplating such a course of events as probable but, if it occurs, provision is made to meet it

he Pohee

"89 We turn now to our own further recommendations for the specific protection of the Police Force itself. Of course, the due discharge of his special responsibility for peace and tranquility will, in riself, entitle the Governor to intervene immediately if, by reason of ill-timed measures of economy or the attempted exertion of political influence on the Police Force or from any other cause, the morale or the efficiency of that Force is endangered. Further the Governor has another special responsibility it is his duty to secure to the members of the Police, as of other Public Services, any lights provided for them by the Constitution Act and to safeguard their legitimate interests These are important safeguards, but there is a special factor in police administration which requires to be specially protected. We refer to the body of Regulations known as the Police Rules", promulgated from time to time under powers aven by the various Police Acts A large number of the Rules deal with matters of quite minor importance and are constantly amended, in practice, on the responsibility of the Inspector-General of Police bimself. It would be unnecessary to require the Governor's consent to every amendment of this kind. But the subject-matter of some of the Rules is so vital to the well-being of the Police Force that they ought not, in our opinion, to be amended without the Governor's consent, and the same consideration applies a fortiers to the Acts themselves, which form the statutory basis of the Rules Our aum should be to ensure that the internal organisation and discipline of the Police continue to be regulated by the Inspector-General, and to protect both him and the Ministers themselves from political pressure in this vital field. We, therefore, recommend that the consent of the Governor, given in his discretion, should be required to any legislation which would amend or repeal the General Police Act in force in the Province or any other Police Acts (such as the Bombay City Police Act, the Calcutta Police Act, the Madras City Police Act, and Acts regulating Military Police in Provinces where such forces exist). We further recommend that any requirement in any of these Acts that Rules made under them shall be made or approved by the local Government is to be construed as involving the consent of the Governor, given in his discretion, to the making or amendment of any Rules which, in his opinion, relate to, or affect, the organisation or discipline of the Police.

"90. But there is another vital department of Police administration The Special Property of Police Police administration The Special Property of Police Police Property of Poli to which we must draw attention. It has been represented to us very forcibly that, whatever may be the decision with regard to the transfer of Law and Order generally, special provision ought to be made with regard to that branch of the Police which is concerned with the suppression of terrorism. We do not here refer to those members of the Police who are occupied in combating terrorism as part of their regular functions in the prevention of crime and the maintenance of order, nor again to the Criminal Investigation Department which exists in every Province to assist the ordinary police in the detection of ordinary crime: we have in mind that organisation which is sometimes known as the Special Branch, a hody of carefully selected officers whose duty is the collection and sifting of information on which executive police action against terrorism is taken. Their work necessarily involves the employment of confidential informants and agents and it is obvious that these sources of information would at once dry up if their identity became known, or were liable to become known, outside the particular circle of Police officers concerned. Though, at the moment, this problem is perhaps of immediate importance only in the Province of Bengal and, to a lesser extent, in the Provinces which border on Bengal, terrorism and revolutionary conspiracy have not been confined to those territories, nor consequently is the necessity for efficient counter-revolutionary measures limited to them. Bengal, however, as has been proved to us by the evidence we have received, has a particularly long and disquieting record of murder and outrage, of which Indians and Europeans have both been the victims. It has also shown, in a marked degree, a rise or fall in such terrorist crime according as the bands of the authorities have been weakened or strengthened, and as precautionary and special measures have been relaxed or intensified.

"91. For these reasons, it is, in our view, essential that the records of S any such Intelligence Department should be protected from even the record slightest danger of leakage. Experience in every country shows how strict this protection must be. It has been argued that an Indian Minister, who may have to defend subsequently before the Legislature an arrest or prosecution made or begun by his orders, must have the right to satisfy himself that the information on which he is invited to act is in all respects trustworthy, and that the names of the informants or agents from whom it has been obtained could not in the last resort be withheld from him. We think that those who argue thus are not acquainted with the general practice in matters of this kind. We are informed by those who have experience of such matters in this country that the practice is that in a Secret Service case the names are not disclosed even to the Minister most immediately concerned. We have no reason to suppose that Indian Ministers will not adopt the same convention; but the difficulty arises not because Indian Ministers are likely to demand or disclose the names of informants or agents, but because the informants or agents themselves would not feel secure that their identity might not be revealed. So long as this doubt exists, the consequences are the same,

whether it is ill-founded or not. We, therefore, recommend that the Instrument of Instructions of the Governors should specifically require them to give directions that no records relating to intelligence affecting terrorism should be disclosed to anyone other than such persons within the provincial Police Force as the Inspector-General may direct, or such other public officers outside that Force as the Governor may direct. We further recommend that the Constitution Act should contain provisions giving legal sanction for directions to this effect in the Instrument of Instructions")

It is moved by the Lord Rankeillour. As an amendment to the above amendment, to insert at the end of paragraph 89:—

("Lastly, we think that the Governor-General should be instructed to inform the Provincial Governors of any Rules which in his opinion should not be cancelled or altered without his consent.")

The amendment hy leave of the Committee is withdrawn.

The original amendment is again moved.

The same is agreed to.

New paragraphs 88 to 91 are again read.

The further consideration of paragraphs 88 to 91 is postponed.

Paragraph 92 is again read.

It is moved by the Marquess of Linlithgow. Pages 43 and 44, to leave out paragraph 92 and to insert the following new paragraph:—

Special powers required for combating terrorism.

(" 92. But, even so, the circumstances set out above render it imperative to arm the Governor with powers which will ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators are not less efficient and unhesitating than they have been in the past. We are, indeed, particularly anxious not to absolve Indian Ministers, in Bengal or elsewhere, from the responsibility for combating terrorism, and we think that such executive duty should be clearly laid upon them. But the issues at stake are so important, and the consequences of inaction, or even of half-hearted action, for even a short period of time, may be so disastrous, that the Governor of any Province must, in our opinion, have a special power over and above his special responsibility for the prevention of any grave menace to peace and tranquillity to take into his own hands the discharge of this duty, even from the outset of the new Constitution. This purpose would not be adequately served by placing the Special Branch of the Provincial Police alone in the personal charge of the Governor. That course has been urged upon us, but we are convinced that it falls short of what is required. Instead, we recommend that the Constitution Act should specifically empower the Governor, at his discretion, if he regards the peace and tranquillity of the Province as endangered by the activities, overt or secret, of persons committing or conspiring to commit crimes of violence intended to overthrow the Government hy law established, and if he considers that the situation cannot otherwise be effectively handled, to assume charge, to such extent as he may judge requisite, of any branch of the government which he thinks it necessary to employ to combat such activities, or if necessary to create new machinery for the purpose If the Governor exercises this power, he should be further authorised, at his discretion, to appoint an official as a temporary member of the Legislature, to act as his mouthpiece in that body, and any official so appointed should have the same powers and rights, other than the right to vote, as an elected member. The powers which we have just described would he discretionary powers, and the Governor would, therefore, he subject to the superintendence and control of the Governor-General, and ultimately of the Secretary of State, in all matters connected with them. We should add that if conditions in Bengal at the time of the inauguration of Provincial Autonomy have not materially improved, it would, in our judgment, he essential that the Governor of that Province should exercise the powers we have just described forthwith and should be directed to do so in his Instrument of Instructions, which, in this as in other respects, would remain in force until amended with the consent of Parliament.1")

Ohjected to.

On Question :-

Contents (23)

Not Contents (3) Lord Snell.

Mr. Attlee.

Mr. Morgan Jones.

Marquess of Salisbury. Marquess of Zetland Marquess of Linlithgow. Marquess of Reading. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Middleton. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson, Mr. Foot.

Sir Samuel Hoare, Sir Joseph Nall. Lord Eustace Percy.

Sir John Wardlaw-Milne.

Earl Winterton.

The said amendment is agreed to.

New paragraph 92 is again read.

The further consideration of paragraph 92 is postponed.

It is moved by the Marquess of Linlithgow. After new paragraph 92 to insert the following new paragraph:-

(" 92A. We have only to add that we have considered in this connexion a proposal made to us that the Intelligence Departments—or at all events the Special Branch where such exists—of the provincial Police Forces should be placed under the control of the Governor-General, who should ntilise them, through the agency of the Governor, as local offshoots of the Central Intelligence Bureau. We agree with the close touch which intelligence Bureau. The close touch which Bureau. has hitherto obtained between the Intelligence Departments of the Provinces and the Central Intelligence Bureau should continue. But to place the provincial Intelligence Departments under the departmental control of the Central Intelligence Bureau would, we think, be undesirable, as tending to break up the organic unity of the provincial Police Force. We recommend, therefore, that the Central Bureau should, under the new Constitution, be assigned to one of the Governor-General's Reserved Departments as part of its normal activities, and that the change in the form of government, whether at the Centre or in the Provinces, should not involve any change in the relationship which at

present exists between the Central Bureau and the provincial Intelligence Departments. Should the Governor-General find that the information at his disposal, whether received through the channel of the Governors or from the provincial Intelligence Departments through the Central Intelligence Burean, is inadequate, he will, in virtue of recommendations which we make later possess complete authority to secure through the Governor the correction of any deficiencies, and indeed to point out to the Governor, and require him to set right, any shortcomings which he may have noticed in the organisation or activities of the provincial Intelligence Branch.")

The same is agreed to.

New paragraph 92A is again read.

The further consideration of paragraph 92A is postponed.

Paragraphs 93 to 346 are again read and postponed.

Paragraph 347 is read.

It is moved by the Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones. Pages 190 and 191, to leave out paragraph 347 and to insert the following new paragraph:—

("347. We are impressed with the insistence with which Indians of all sorts of opinion ask that a statement of their 'fundamental rights' should find a place in the new Constitution Act. The Report of the Indian All-Parties Conference also made a strong point of this. The authors of the White Paper 'see serious objections 'to giving statutory expression to a declaration of this character, and suggest that in connection with the inauguration of the new Constitution a pronouncement on the matter might be made by the Sovereign. We cannot forget that such a pronouncement was made by her late Majesty Queen Victoria in these words:

'We declare it to be our Royal will and pleasure that none be in any wise favoured, none elected, or disquieted, by reason of their religious faith or observances, but that all shall alike enjoy the equal and impartial protection of the law, and we do strictly charge and enjoin all those who may he in anthority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.

'And it is our further will that, so far as may be, our subjects, of whatever race or creed, be freely and impartially admitted to office in our service, the duties of which they may be qualified by their education, ability and integrity to discharge.

'We know and respect the feelings of attachment with which the natives of India regard the lands inherited by them from their ancestors, and we desire to protect them in all rights connected therewith, subject to the equitable demands of the State, and we will see that generally in framing and administering the law, due regard be paid to the ancient rights, usages, and customs, of India.'

"We cannot pretend to believe that full effect has been given to the terms of that Royal Proclamation in India. In view of the fact that it has been impressed on the Indian delegates that no pledges or declarations are binding save such as are embodied in Acts of Parliament, we think the Indian plea is sound, that whenever possible their fundamental rights should be embodied in the Constitution Act and so be secured to them beyond the possibility of doubt. A proposed list of these "fundamental rights" is given in Chapter 7 of the Indian All-Parties Conference. In reference to these they say:—

'Our first care should he to have our fundamental rights guaranteed

in a manner which will not admit their withdrawal under any circumstances. With perhaps less reason than we have, most of the modern constitutions of Europe have specific provisions to secure such rights to the people.'

"They go on very pertinently to say that:-

'Another reason why great importance attaches to a declaration of rights is the unfortunate existence of communal differences in the country. Certain safeguards and guarantees are necessary to create and establish a sense of security among those who look upon each other with distrust and suspicion. We could not better secure the full enjoyment of religious and communal rights to all communities than hy including them among the basic principles of the constitution.'")

The same is disagreed to.

Paragraph 347 is again read.

The further consideration of paragraph 347 is postpoued,

Paragraph 348 is again read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 191, line 40, after (" his ") to insert (" sex,").

The same is disagreed to.

It is moved by the Lord Ker (M. Lothian). Page 191, line 42, at the end to insert (" The proposal in the White Paper, however, goes on to say that," no " 'law will be deemed to be discriminatory for this purpose on the ground only " that it prohibits either absolutely or with exceptions the sale or mortgage " of agricultural land in any area or to any person not belonging to some "' class recognised as being a class of persons engaged in, or connected with, " agriculture in that area, or which recognises the existence of some right, "' privilege or disability attaching to members of a community by virtue of " some privilege, law or custom having the form of law.' This proviso is "intended to cover legislation such as the Punjab Land Alienation Act which " is designed to protect the cultivator against the money lender. This is no "doubt a desirable object. Inasmuch, however, as the full effect of the "proviso cannot be foreseen and may have the result that the legitimate "interests of minorities may be impaired while they are denied the right of "appeal to the Courts for redress, we think that in cases where the legitimate "interests of minorities may be adversely affected and access to the courts is "barred by this proviso in the constitution the Governor should consider "whether his special responsibility for the protection of minorities necessitates " action on his part.")

The same is agreed to.

Paragraph 348 is again read as amended.

The further consideration of paragraph 348 is postponed.

Paragraph 349 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 191, to leave out paragraph 349.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 191, lines 44 and 45, to leave out from ("purposes") in line 44 to ("should") in line 45.

The amendment, by leave of the Committee, is withdrawn.

It.is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 191, line 45, to leave out from ("Compensation") to ("should").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr Morgan Jones, Mr Attlee, Mr Cocks, and the Lord Snell Page 191, lines 46 to 49, to leave out from ("prohibited") to the end of the paragraph

The amendment, by kave of the Committee, is withdrawn

Paragraph 349 is again read.

The further consideration of paragraph 349 is postponed

It is moved by Mr Butler and Sir Samuel Hoarc Page 191, after paragraph 349 to insert the following new paragraph —

Special case of grants of land or of tenure of land free of land revenue

"349A But there is another form of private property-perhaps more accurately described as 'vested interest'-common in India which we think requires more specific protection. We refer to grants of land or of tenure of land free of land revenue, or subject to partial remissions of land revenue, held under various names (of which Taluk, Inam, Watan, Jagir and Muafi are examples) throughout British India by various individuals or classes of individuals Some of these grants date from Moghul or Sikh times and have been confirmed by the British Government others have been granted by the British Government for services rendered Many of the older grants are enjoyed by religious bodies and are held in the names of the managers for the time being. The terms of these grants differ older grants are mostly perpetual, modern grants are mostly for three, or even two, generations But, whatever their terms, a grant of this kind is always held in virtue of a specific undertaking given by, or on the authority of, the British Government that, subject in some cases to the due observance by the grantee of specified conditions, the rights of himself and his successors will be respected either for all time or, as the case may be, for the duration of the grant A well-known instance of such rights is to be found in those enjoyed by the present Talukdars of Oudh, who owe their origin to the grant to their predecessors in 1858, after the Oudh Rebellion and the consequent confiscation of talukdarı rights previously claimed in Oudh, of sanads by Lord Canning, the then Governor-General, conferring proprietary rights upon all those who engaged to pay the jumma which might then or might from time to tune subsequently, be fixed subject to loyalty and good behaviour, and the rights thus conferred were declared to be permanent, hereditary and transferable ")

The same is agreed to

New paragraph 349A is again read as amended

The further consideration of paragraph 349A is postponed

It is moved by Mr Butler and Sir Samuel Hoare Page 191 After paragraph 349A, to insert the following new paragraphs —

Prior consent of Covernor-General or Governor should be required to legislation affecting such grants

(" 349B It is not unnatural that the holders of privileges such as we have described should be apprehensive lest the grant of responsible government, and the consequent handing over to the control of Ministers and Legislatures of all matters connected with land revenue administration, should result in a failure to observe the promises which have heen extended by Governments in the past to themselves or their predecessors in interest. Some of the claims to protection which have been urged up in us in this connexion would be satisfied by little less than a statutory declaration which would have the effect of maintaining unaltered and unalterable for all time, however strong the justification for its modification might prove to be in the light of changed circumstances, every promise or undertaking of the kind made by the British Government in the past. We could not contemplate so far-reaching a limitation upon the natural consequences of the change to responsible government We recommend, however, that the Constitution Act should contain an appropriate provision requiring the prior consent of the Governor-General or the Governor, as the case may be, to any proposal, legislative or executive, which would alter or prejudice the rights of the possessof of any privilege of the kind to which we have referred

349C. We have considered whether similar provision should be The Permanent Settlement. made to protect the rights of Zamindars and others who are the successors in interest of those in whose favour the Permanent Settlement of Bengal, Bihar and Orissa and parts of the United Provinces and Madras was made at the end of the 18th century. Briefly, the effect of this Settlement was to give a proprietary right in land to the class described as Zamindars, on the understanding that they collected and paid to Government the revenue assessed on that land which was fixed at rates declared at the time to be intended to stand unaltered in perpetuity. It is apparent that the position of Zamindars under the Permanent Settlement is very different from that of the individual holders of grants or privileges of the kind we have just described; for, while the privileges of the latter might, but for a protection such as we suggest, be swept away by a stroke of the pen with little or no injury to any hut the holder of the vested interest himself, the alteration of the character of land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population in addition to those of the compara-tively small number of Zamindars proper, and might indeed produce an economic revolution of a most far-reaching character. Consequently, no Ministry or Legislature in Bengal could, in fact, embark upon, or at all events carry to a conclusion, legislative proposals which would have such results unless they had behind them an overwhelming volume of public support. Moreover, while we do not dispute the fact that the Permanent Settlement is an arrangement which is binding upon the British Government as one of the parties to it, we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to an Indian Legislature which is to be charged inter alia with the duty of regulating the land revenue system of the Province to alter the enactments embodying the Permanent Settlement, which enactments, despite the promises of permanence they contain, are legally subject (like any other Indian enactment) to repeal or alteration. At the same time, we feel that the Permanent Settlement is not a matter for which, as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility; and we think that the Governor should be enabled on their behalf to intervene at the earliest stage if proposals are made for the modification of the Settlement which, in his opinion, would be prejudicial to any of the interests involved. We recommend, therefore, that in this case also the Constitution Act should require that the previous sanction of the Governor given in his discretion should he the condition precedent to the introduction of any Bill which would alter the character of the Permanent Settlement.

"349D. In concluding this chapter of our Report, we take the oppor- The English tunity of mentioning a topic which can conveniently be dealt with here, though it has no very direct connexion with the question of discrimination or of fundamental rights. It has been urged on us that provision should be made requiring the English language to be the official language of the Federation, or, more particularly, that English should receive legal status as the official language of the Constitution and of the superior Courts, and as one of the official languages of the Provincial Governments. In our judgment, no useful purpose would be served by a general declara-tion in the sense just indicated, and any such declaration would at once give rise to questions of great difficulty and complexity in relation to education. Our recommendations set out in this chapter include language amongst the grounds upon which, in certain cases, discrimination is to be inadmissible, and these recommendations will accordingly prevent any individual who falls within the scope of the protection of these provisions from being discriminated against on the ground that his mother tongue is English. Apart from this, we recommend that the Letters Patent issued to the High Courts should prescribe English as the language of these Courts, and we think that the Constitution Act might

(C 14542) P4 well provide, as do the Statutory Rules made under the existing Government of India Act at the present moment, that the business of all the Legislatures is to be conducted in English, aubject to appropriate provision ensuring the right of any member unacquainted with English to address the Council in the vernacular. At the present moment the language of the Subordinate Courts is laid down by each provincial Government under provisions in the Codes of Civil and Criminal Procedure. We see no reason to suppose that the Provincial Governments will cease to exercise this power under the new Constitution or that they will exercise it in an unreasonable manner.")

New paragraphs 349B and 349C are, by leave of the Committee, withdrawn.

New paragraph 349D is agreed to.

New paragraph 349D is again read.

The further consideration of paragraph 349D is postponed.

Paragraph 350 is read and postponed.

Paragraph 351 is read.

It is moved by the Lord Rankeillour. Page 192, line 37, leave out from ("period,") to ("in").

The same is agreed to.

Paragraph 351 is again read as amended.

The further consideration of paragraph 351 is postponed.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 192, after paragraph 351 to insert the following new paragraph:—

("351A. Whilst however we are unable to recommend at the moment the specific grant of Constituent Powers we consider that the new Constitution must have within itself provisions whereby developments may take place. We would point out that in our own country constitutional development has taken place not so much by specific enactments as by usage, custom and the falling into desuetude of certain rights. We consider therefore, that the instrument of instructions to the Governor-General and the Provincial Governors should be so drafted as to allow of such modifications and developments taking place and further that a variation from time to time of the instrument of instructions will provide the means of a steady transfer of responsibility to Ministers and the elected representatives of the Indian people. Thus India will be enabled to follow the same path towards greater responsibility as has been trodden by other parts of the British Empire.")

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 352 to 356 are again read and postponed.

Paragraph 357 is again read.

It is moved by the Lord Ker (M. Lothian). Page 195, line 20, after ("Federation") to insert ("except that any Provincial legislature should "have power to propose the removal of the 'application' requirement and "the lowering of the educational standard to literacy in the case of women "voters, as set forth in paragraph 134, at any time after the first election in "the province under the new constitution.")

The same is agreed to.

Paragraph 357 is again read as amended.

The further consideration of paragraph 357 is postponed.

Paragraphs 358 to 360 are again read and postponed.

Paragraph 361 is read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 197, lines 30 to 33, to leave out from ("Ministers") in line 3 to the end of the paragraph and to insert ("We should like to see Indian affairs" brought at once under the Dominions Office. Failing this, and as a step "in that direction, we recommend the merging of the India Office into a new "office with a Secretary of State for the self-governing parts of the British "Commonwealth of Nations in the East. This would include not only India "but Ceylon, Burma, if separated, and other portions of the British Empire" in the East as and when they become self-governing.")

The same is disagreed to.

Paragraph 361 is again read.

The further consideration of paragraph 361 is postponed.

Ordered, that the Committee be adjourned till tomorrow at half-past Ten o'clock.

## Die Martis 17° Julii 1984

#### Present:

LORD ARCHBISHOP OF CANTERBURY.
MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
MARQUESS OF READING.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD KER (M. LOTHIAN).
LORD HARDINGE OF PENSHURST.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.

MR. ATILEE.
MR. BUILER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOARE.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.
EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraph 362 is read.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 197, line 35, to leave out ("less") and to insert ("more").

The same is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 198, line 4, to leave out (" two ") and to insert (" three ").

The same is regreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 198, line 10, at the end to insert ("; and, thirdly, in order to secure that, in matters where the "concurrence of the majority of his advisers will be required, the Secretary "of State shall be an effective participant in their deliberations, it seems desirable to us that the Secretary of State shall, in case of equality of votes, "have a second or casting vote.")

The same is agreed to.

Paragraph 362 is again read as amended.

The further consideration of paragraph 362 is postponed.

Paragraph 363 is again read and postponed.

Paragraph 364 is again read.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 198, lines 40 to 42, to leave out from (" that ") in line 40 to (" any ") in line 42.

The same is disagreed to.

It is moved by Mr. Attlee. Page 198, line 44, after ("changes") to insert ("should be granted compensation out of British revenues.")

Objected to.

All amendments are to the Draft Report (vide infra paras. 1-42B, pp. 470-491; and vide supra paras. 43-463, pp. 64-254) and NOT to the Report as published. (Vol. I, Part I).

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

On Question :-

Content (1).

Mr. Attlee.

Not Contents (18).

Lord Archbishop of Canterbury. Marquess of Salisbury. Marquess of Zetland. Marquess of Linhthgow. Marquess of Reading. Earl Peol. Lord Middleton. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankellour. Mr. Butler. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Foot Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy. Earl Winterton.

The said amendment is disagreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 198, line 44, at the end to insert ("and we intend that the expression 'India Office Staff' in this "connexion should be interpreted as including members of the Audit Office "and former members of the India Office now serving in the Office of the "High Commissioner for India.")

The same is agreed to.

Paragraph 364 is again read, as amended.

The further consideration of paragraph 364 is postponed.

Paragraph 365 is again read and postponed.

Paragraph 368 is again wad

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 200, to leave out paragraph 366 and to insert the following new paragraph:—

("366. The White Paper proposes, in paragraph 32, that a Reserve Bank, 'free from political influence, will have been set up by Indian legislation,' before the first Federal Ministry comes into being. If it should be proved impossible successfully to start the Reserve Bank, His Majesty's Government 'are pledged to call into conference representatives of Indian opinion.' We note that neither at the first nor at the second Round Table Conference was the establishment of the Reserve Bank treated as a condition precedent to the inauguration of the Federation. It was an entirely new proposal brought forward at the third Round Table Conference. We understand that the Indian Legislature has already passed a Reserve Bank of India Act, and we venture to hope that the date of its inauguration may be speedily decided, since we understand that the beginning of the Indian Federation depends upon it Assuming the establishment of the Bank, we snggest that the Governor and Deputy Governor should be selected by the Governor-General in consultation with his Ministers.

"We are not in agreement with the underlying conception of the establishment of the Reserve Bank, namely, that it should be entirely free from political influence. "We consider that decision of policy in respect of credit and currency are vital interests of the community. They should not be made by shareholders whose private interests may not coincide with the welfare of the State, but should be influenced by the Government.

"In any event it should be made clear that India's currency and credit policy will be decided in accordance with her own needs and not by the

influence of external financial interests or foreign creditors.")

The same is disagreed to.

Paragraph 366 is again read.

The further consideration of paragraph 366 is postponed.

Paragraphs 367 and 368 are again read and postponed.

Paragraph 369 is again read.

It is moved by the Lord Eustace Percy. Page 201, line 23, after ("basis.") to insert ("We think also that it is unwise absolutely to prohibit the Governor-"General from appointing a servant of the Crown in India as a member of "the Authority".)

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 201, line 23, after ("basis.") and to insert :—

("The Minister who is responsible to the Legislature for the Indian Railways and for the Railway Budget should be ex officio Chairman of the Railway Board, but we consider that it is undesirable that he should be subject to interpellation on details of administration, particularly on those relating to appointments and promotions").

The same is disagreed to.

Paragraph 369 is again read.

The further consideration of paragraph 369 is postponed.

Paragraph 370 is read.

It is moved by Sir John Wardlaw-Milne. Page 202, line 5, at the end to insert the following new sub-paragraph:—

(" (e) The continuance in full force of the contracts at present existing with the Indian Railway Companies and the security of the payments periodically due to them in respect of guaranteed interest, share of earnings and surplus profits, as well as their right in accordance with their contracts to have access to the Secretary of State in regard to disputed points and, if desired, to proceed to arbitration. (Para. 4).")

The same is agreed to.

Paragraph 370 is again read, as amended.

The further consideration of paragraph 370 is postponed.

The Appendix (IV) is again read and postponed.

Paragraphs 371 to 373 are again read and postponed.

Paragraph 374 is again read.

It is moved by the Lord Rankeillour. Page 208, line 15, at the end to insert ("and his salary should not be votable").

The same is agreed to.

Paragraph 374 is again read-as amended.

The further consideration of paragraph 374 is postponed,

Paragraphs 375 to 379 are again read and postponed.

Paragraph 380 is again read.

It is moved by Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 212, lines 11 to 15, to leave out from the beginning of the paragraph to the end of the

first sentence and to insert :-

("The present practice in the case of the Dominions is that the Dominion Governments appoint their own High Commissioners as a matter of right without any provision being necessary in their constitutions. We think that India in this matter should stand in the same position and that the High Commissioner for India should have full power to act on the instructions of the Government of India without there being any necessity for reference to Whitehall. The High Commissioner will no doubt continue to serve Provincial Governments as well as the Federal Government.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 380 is again read.

The further consideration of paragraph 380 is postponed.

Paragraphs 381 to 386 are read and postponed.

Paragraph 387 is again read.

It is moved by the Marquess of Linlithgow. Page 216, line 13, to leave out ("unlike the Indian White Paper").

The same is agreed to.

Paragraph 387 is again read, as amended.

The further consideration of paragraph 387 is postponed.

Paragraph 388 is again read and postponed.

Paragraph 389 is again read.

It is moved by the Marquess of Linlithgow. Page 216, line 34, to leave out ("Bengal") and to insert ("Burma").

The same is agreed to.

Paragraph 389 is again read, as amended.

The further consideration of paragraph 389 is postponed.

Paragraph 390 is again read and postponed.

Paragraph 391 is again read.

It is moved by the Marquess of Linlithgow. Page 217, lines 32 and 33, to leave out (" of India upon Burma has been ") and to insert (" which Burma " can exert on Indian political influence and the interest which India generally " feels in Burma's affairs are ").

The same is agreed to.

Paragraph 391 is again read, as amended.

The further consideration of paragraph 391 is postponed.

Paragraphs 392 and 393 are again read and postponed.

Paragraph 394 is again read.

It is moved by the Marquess of Linlithgow. Page 219, line 8, after Burma.") to insert ("unlike all other Provinces except Bombay"). The same is agreed to.

Paragraph 394 is again read as amended.

The further consideration of paragraph 394 is postponed.

Paragraph 395 is read and postponed.

Paragraph 396 is read.

It is moved by the Earl Peel. Page 220, lines 12 and 13, to leave out from ("which") in line 12 to ("would") in line 13 and to insert ("in our "judgment").

The same is agreed to.

Paragraph 396 is again read, as amended.

The further consideration of paragraph 396 is postponed.

Paragraph 397 is again read.

It is moved by the Marquess of Linlithgow. Page 221, lines 10 and 11, to leave out from ("reinforced.") in line 10 to ("but") in line 11 and to insert ("Federation would not come into being simultaneously with Provincial Antonomy").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 221, line 12, to leave out ("It") and to insert ("Federation").

The same is agreed to.

It is moved by the Lord Rankeillour. Page 221, line 17, after ("all") to insert ("and if approved by the Burmese Legislature or a majority of the "electors in a referendum,").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 397 is again read as amended.

The further consideration of paragraph 397 is postponed.

Paragraphs 398 to 402 are again read and postponed.

Paragraph 403 is again read.

It is moved by the Marquess of Linlithgow. Page 224, line 18, to leave out from ("imposed") to the second ("to") and to insert ("within limits "sufficiently low").

The same is agreed to.

Paragraph 403 is again read as amended.

The further consideration of paragraph 403 is postponed.

Paragraphs 404 and 405 are again read and postponed.

Paragraph 406 is again read.

It is moved by the Lord Rankeillonr. Page 225, line 36, to leave out (" for a prescribed period").

The same is disagreed to.

Paragraph 406 is again read.

The further consideration of paragraph 406 is postponed.

Paragraph 407 is again read.

It is moved by the Marquess of Linlithgow. Page 226, line 4, to leave out ("desirability") and to insert ("necessity").

The same is agreed to.

Paragraph 407 is again read, as amended.

The further consideration of paragraph 407 is postponed.

Paragraphs 408 to 414 are again read and postponed.

Paragraph 415 is again read.

It is moved by the Marquess of Linhthgow. Page 229, line 31, after ("the") to insert ("comparative").

The same is agreed to.

Paragraph 415 is again read, as amended.

The further consideration of paragraph 415 is postponed.

Paragraphs 416 to 419 are again read and postponed.

Paragraph 420 is again read.

It is moved by the Marquess of Linlithgow. Page 232, line 6, after ("Burma") to insert ("though we assume that there would continue to be a "General Officer in command of the regular military forces").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 232, lines 19 to 21, to leave out from ("kind") in line 19 to the end of the sentence.

The same is agreed to.

Paragraph 420 is again read, as amended.

The further consideration of paragraph 420 is postponed.

Paragraph 421 is again read.

It is moved by the Marquess of Linlithgow. Page 232, line 22, after ("comment") to insert ("except, in regard to the latter, to state beyond the "possibility of misunderstanding that they have no concern with the "Buddhist religion or any other religion of the population at large").

The same is agreed to.

Paragraph 421 is again read, as amended.

The further consideration of paragraph 421 is postponed.

Paragraph 422 is again read.

It is moved by the Marquess of Linlithgow. Page 232, lines 37 to 39, to leave out from ("Federation") in line 37 to the end of the sentence and to insert ["A Reserve Bank of India has now been authorised by Act of the "Indian Legislature and measures are therefore in train for the fulfilment of "the condition precedent".)

The same is agreed to.

Paragraph 422 is again read, as amended.

The further consideration of paragraph 422 is postponed.

Paragraph 423 is again read.

It is moved by Sir John Wardlaw-Milne. Page 233, lines 19 and 20, to leave out from ("Department") in line 19 to the end of the sentence.

The same is agreed to.

Paragraph 423 is again read, as amended.

The further consideration of paragraph 423 is postponed.

Paragraphs 424 to 428 are again read and postponed.

Paragraph 429 is again read.

It is moved by the Lord Ker (M. Lothian). Page 238, line 8, to leave out ("very striking") and to insert ("considerable").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian). Page 236, lines 14 to 15, to leave out from the second ("5;") to the end of line 15, and to insert ("if all women "eligible to vote apply to be put on the register. The proportionate increase "in the Burmese electorate is thus somewhat less than that in the case of "India, both in the case of men and women. The reason for this is that the "number of voters on the register in Burma is already considerably higher "in proportion to population than in India and").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian). Page 236, line 17, to leave out from ("India") to the end of the sentence and to insert ("which means that "a property qualification results in a larger proportion of the population being placed on the roll").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 236, line 31, to leave out ("a means") and to insert ("for the purpose").

The same is agreed to.

Paragraph 429 is again read, as amended.

The further consideration of paragraph 429 is postponed.

Paragraph 430 is again read.

It is moved by the Marquess of Linlithgow. Page 236, line 44, after ("also") to insert ("as in British India").

The same is agreed to.

Paragraph 430 is again read, as amended.

The further consideration of paragraph 430 is postponed.

Paragraphs 431 to 435 are again read and postponed.

Paragraph 436 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, line 14, at the end to insert ("We think that the restrictions on the powers of the Legislature "both in regard to the application of enactments passed by it and in regard to "questions and resolutions which we have recommended elsewhere in regard to similar areas in British India, should apply in regard to the Excluded "Areas and Partially Excluded Areas of Burnea."

The same is agreed to.

Paragraph 436 is again read, as amended.

The further consideration of paragraph 436 is postponed.

Paragraph 437 is again read and postponed.

Paragraph 438 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, lines 36 and 37, to leave out from the first (" to ") in line 36 to the end of the sentence, and to insert (" remain members of the Indian Civil Service, seconded for service under " the Government of Burma and to retain all the rights and privileges of that " service. If we correctly understand this request to mean that the officers " in question desire that though no longer subordinate in any degree to the " Governor-General of India in Council, they should still be entitled to describe " themselves as members of the Indian Civil Service, to which they were in " fact recruited, we see no objection to acceding to their desire.")

The same is agreed to.

Paragraph 438 is again read, as amended.

The further consideration of paragraph 438 is postponed.

Paragraph 439 is again read.

It is moved by the Marquess of Linhthgow. Page 242, lines 3-5, to leave out from ("it") in line 3 to ("enjoy") in line 5 and to insert ("includes "certain appointments the incumbents of which").

The same is agreed to.

Paragraph 439 is again read, as amended.

The further consideration of paragraph 439 is postponed.

Paragraph 440 is again read.

It is moved by the Marquess of Linlithgow. Page 242, lines 24 and 25, to leave out from ("being") in line 24 to the end of the paragraph and to insert ("some recruitment by the Secretary of State of European medical officers" must continue").

The same is agreed to.

Paragraph 440 is again read, as amended-

The further consideration of paragraph 440 is postponed.

Paragraphs 441 to 444 are again read and postponed.

Paragraph 445 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 244, line 7, at the end to insert ("But the separation of Burma from India will create a special "category of persons in Burma of United Kingdom domicile for whose protection in India provision will, we think, require to be made in the "Constitution Act for India rather than that for Burma. We refer to the "case of Companies established already in Burma with United Kingdom personnel and United Kingdom capital. Such Companies have established themselves in Burma as a Province of British India and we think that it "would evidently be inequitable if, after the separation of Burma, they are in a less favourable position in respect of their operations in British India "than a Company established at the same time and under the same conditions in, say, Bombay or Bengal.")

The same is agreed to.

Paragraph 445 is again read, as amended.

The further consideration of paragraph 445 is postponed.

Paragraphs 446 to 449 are again read and postponed.

Paragraph 450 is again read.

It is moved by the Marquess of Liniithgow. Page 246, line 8, after ("Burma,") to insert ("But as Burma after separation will be a unitary State and will not be within the jurisdiction of the Indian Federal Court, we think that an appeal should be as of right to the Privy Council from the High Court in any case involving the interpretation of the Constitution Act. We take this opportunity to record our opinion that the recommendations which we have made elsewhere for the prescription of English for the conduct of business in the Indian Legislatures should apply equally to the case of the High Court and the Legislature in Burma. As regards audit arrangements, it is evident that Burma will require after separation her own andit system.")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 246, line 14, at the end to insert ("We think that liberty should be afforded in the Act for the "new Burma Government to establish a High Commissioner of its own in "London if it finds it necessary to do so; but we foresee the possibility that "the amount of business requiring to be transacted in London on behalf of "the Government of Burma may be so small as not to justify, at the outset,

"the expense of establishing such an office; and we think that it might be well to examine the possibility of the functions of such an official being undertaken by some other authority on an agency basis for the time being.") The same is agreed to.

Paragraph 450 is again read, as amended.

The further consideration of paragraph 450 is postponed.

Paragraph 451 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 246, line 20, after ("Burma.") to insert ("It follows that there should be a transference of the "rights, liabilities and obligations incurred by the Secretary of State in "Council in respect of Burma to the appropriate authority to be established "in Burma, corresponding to the transference to the Federal or Provincial "Governments in India which in an earlier passage we have suggested should be provided for in the Indian Constitution.")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 246, line 30, after ("person.") to insert ("There is, we are convinced, no real danger that the "interests of Burma would be unfairly subordinated to those of India in the "hands of a Secretary of State holding the double office.")

The same is agreed to.

Paragraph 451 is again read, as amended.

The further consideration of paragraph 451 is postponed.

Paragraph 452 is again read.

It is moved by the Marquess of Linlithgow. Page 246, line 33, to leave out ("on service matters") and to insert ("on questions concerning Burma"). The same is agreed to.

It is moved by the Marquess of Linlithgow.

Page 246, line 35, to leave out ("certain") and to insert ("Service").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 246, line 38, after (" on"(cerned ") to insert (" which are and will continue to be " ejusdem generis"
" in India and Burma").

The same is agreed to.

Paragraph 452 is again read, as amended.

The further consideration of paragraph 452 is postponed.

Paragraph 453 is again read and postponed.

Ordered, that the Committee be adjourned to Friday next at half-past Ten o'clock.

# Die Veneris 20° Julii 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY.

LORD CHANCELLOR.

MARQUESS OF SALISBURY.

MARQUESS OF ZETLAND.

MARQUESS OF LINLITEGOW.
MARQUESS OF READING.

EARL OF DERBY.

EARL OF LYTTON.

EARL PEEL.

LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUILER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON.

Mr. FOOT.

SIR SAMUEL HOARE.
LORD EUSTACE PERCY.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The proceedings of Tucsday last are read.

Paragraphs 1 to 45 are again postponed.

Paragraph 46 is again read.

It is moved by the Marquess of Linlithgow. Page 22, lines 6 and 7, to leave out from ("that") in line 6 to ("by") in line 7, and to insert ("exclusively provincial sphere practically free from control").

sively provincial sphere practically free from control ").

It is moved by the Marquess of Salisbury. As an amendment to the above amendment, to leave out ("practically") and to insert ("broadly").

The same is agreed to.

The original amendment is again moved.

The same is agreed to, as amended.

It is moved by the Marquess of Linlithgow. Page 22, line 23, after ("sphere") to insert ("though, as we shall explain later, the Governor-"General in virtue of his power of supervising the Governors will have "authority to secure compliance in certain respects with directions which "he may find it necessary to give").

The same is agreed to.

Paragraph 46 is again read, as amended.

The further consideration of paragraph 46 is postponed.

Paragraphs 47 to 57 are again postponed.

Paragraph 58 is again read.

It is moved by the Marquess of Liplithgow. Page 28, lines 12 to 14, to leave out from ("and") in line 12 to the end of the sentence and to insert ("it appears to us that any financial difficulties likely to be caused thereby "are not serious enough to outweigh the advantages which will accrue from "the separation").

The same is agreed to.

Paragraph 58 is again read, as amended,

The further consideration of Paragraph 58 is postponed.

Paragraph 59 is again postponed.

All amendments are to the Draft Report (vide infra paras. I-42B, pp. 470-491; and vide supra paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part I). A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 60 is again read.

It is moved by the Marquess of Linlithgow. Page 29, line 14, at the end to insert ("We make recommendations later in this Report with regard to "changes to be effected in the Act by Order in Council and the parliamentary "control to be exercised over them").

It is moved by the Marquess of Salisbury. As an amendment to the above amendment, at the beginning of the amendment to insert (" of course subject to the sanction of Parliament.")

The amendment to the amendment, by leave of the Committee, is withdrawn.

The original amendment is again moved.

The same is agreed to.

Paragraph 60 is again read, as amended.

The further consideration of paragraph 60 is postponed.

Paragraph 61 is again read.

It is moved by the Marquess of Linlithgow. Page 29, lines 19 to 21, to leave out from ("that") in line 19 to the end of the paragraph and to insert ("appropriate provision should be made in the Constitution Act to ensure "that the Provinces affected and the Central Government are given adequate "opportunities for expressing their views.")

The same is agreed to.

Paragraph 61 is again read as amended.

The further consideration of paragraph 61 is postponed.

Paragraphs 62 to 67 are again postponed.

Paragraph 68 is again read.

It is moved by the Marquess of Linlithgow. Page 32, line 20, to leave out ("unqualified")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 32, line 21, after (" rule") to insert (" as it is understood in this country").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 32, line 25, to leave ou ("the") and to insert ("a").

The same is agreed to.

Paragraph 68 is again read, as amended.

The further consideration of paragraph 68 is postponed.

Paragraphs 69 to 72 are again postponed.

Paragraph 73 is again read.

It is moved by the Marquess of Linlithgow. Page 34, line 36, after (" deny" to insert (" the two Houses of ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linlithgow. Page 34, line 46, at the end, to insert ("We suggest the appropriate procedure should be that the Crown should communicate to Parliament a draft of the proposed Instrument or of any subsequent amendments and that Parliament will then present an "Address praying that the Instrument should issue in the form of the draft or with such modifications as are agreed by both Houses, as the case may be").

It is moved by the Marquess of Salisbury. As an amendment to the above amendment, line 4 of the amendment to leave out (" then ") and to insert (" if it sees fit ").

The same is agreed to.

The original amendment is again moved.

The same is agreed to as amended.

Paragraph 73 is again read, as amended

The further consideration of paragraph 73 is postponed.

Paragraphs 74 to 95 are again postponed.

Paragraph 96 is again read.

It is moved by the Marquess of Linhthgow Page 46, lines 34 and 35, to leave out from ('contemplate") in line 34 to ("as") in line 35.

The same is agreed to

It is moved by the Marquess of Linlithgow Page 46, lines 37 to 41, to leave out from ('Deputy Governor'') in line 37 to ("There") in line 41

The same is agreed to

Paragraph 96 is again read, as amended

The further consideration of paragraph 96 is postponed

Paragraphs 97 to 115 are again postponed

Paragraph 116 is again read.

It is moved by the Marquess of Linhthgow Page 57 to leave out paragraph 116

The amendment, hy leave of the Committee, is withdrawn.

Paragraph 116 is again read

The further consideration of paragraph 116 is postponed

Paragraphs 117 to 120 are again postponed

Paragraph 121 is again read, as amended, and is as follows .-

121 The Communal Award was criticised by more than one witness The White who appeared before us on the ground that it operates inequitably in the Paper case of Bengal, and even more inequitably with the modifications resulting accepted from the Propa Pact. There are also are the property of the propagation of the Propa Pact. from the Poona Pact. There was also criticism of the Award from other

5 Provinces in which the Hindus are in a minority, but elsewhere the Award appears to have met with acceptance, and we entertain no doubt that if any attempt were now made to alter or modify it, the consequences would be disastrous The arrangement which it embodies appears to us to be well thought out and halanced, and to disturb any part of it

10 would be to run the risk of upsetting the whole It accepts indeed the principle of separate electorates for the Muhammadan, Sikh, Indian Christian, Anglo-Indian, and European communities, but we recognize that this is an essential and inevitable condition of any new constitutional scheme We may deplore the mutual distrust of which the insistence

15 on this demand by the minorities is so ominous a symptom, but it is unhappily a factor in the situation which cannot be left out of account, nor do we think that we can usefully add anything to what we have already said on the subject. We accept therefore the proposals in the White Paper for the composition of the Legislative Assembles We

20 feel somewhat differently, however, about the Poona Pact We consider that the original proposals of His Majesty's Government constitute a more equitable settlement of the general communal question and one which is more advantageous to the Depressed Classes themselves in their

present stage of development They united the two sections of the 25 Hindu Community by making them vote together in the general constituencies, thereby compelling candidates to consider the well-heing of both sections of his constituents when appealing for their support, while they secured to the Depressed Classes themselves sufficient spokesmen in the legislature, elected wholly by depressed class votes, to ensure their

30 case being heard and to influence voting, but not so numerous that the Depressed Classes will probably be unable to find representatives of adequate calibre with results unfortunate both to themselves and the legislatures That solution was altered, in a great hurry, under pressure of Mr Gandhis 'fast unto death In view of the fact that His Majesty's

35 Government felt satisfied that the agreement come to at Poona fell within

the terms of their original announcement and accepted it as a valid modification of the communal award, we do not feel able to recommend them now to reject it. But subsequently to the arrangement of the Pact objections to it, in relation to Bengal, have been strongly urged by caste Hindus from that Province. We should welcome an agreement between the caste Hindus and Depressed Classes to reduce the number of seats reserved to the latter in Bengal, possibly with some compensatory increase in such seats in some other Provinces, where a small addition in favour of the Depressed Classes would not be likely materially to affect the balance of communities in the Legislature.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir. Samuel Hoare, and Mr. Butler. Lines 19 and 20 to leave out from ("Assemblies") in line 19 to ("consider") in line 20 and to insert ("As" regards the Poona Pact we are bound to say that we").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 21 to leave out ("constitute") and to insert ("constituted").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 23 to leave out ("is") and to insert ("was").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothiao), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 31 to leave out ("will probably" and to insert ("would").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Lines 32 to 43 to leave out from ("calibre") in line 32 to ("where") in line 43 and to insert ("Under "the pressure of Mr. Gandhi's fast these proposals were precipitally modified; but in view of the fact that His Majesty's Government felt satisfied that "the agreement come to at Poona fell within the terms of their original, announcement and accepted it as an authoritative modification of the "Communal Award, we are clear that it cannot now be rejected. Nevertheless" as we have said, objections to the Pact in relation to Bengal have since been strongly urged by caste Hindus from that Province; and if by agreement between the communities concerned some reduction were made in the "number of seats reserved to the Depressed Classes in Bengal possibly with compensatory increase in the number of their seats in other Provinces").

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian' Mr. Foot, Sir Samuel Hoare, and Mr. Butler. Line 45 at end to insert ("we are disposed to think that the working of the new Constitution" in Bengal would be facilitated.")

The same is agreed to.

Paragraph 121 is again read, as amended.

The further consideration of paragraph 121 is postponed.

Paragraphs 122 to 131 are again postponed.

Paragraph 132 is again read.

It is moved by the Marquest of Linlithgow. Page 65, lines 14 to 18, 5 leave out from (" and ") in line 14 to (" the ") in line 18, and to insert (" w " have reason to believe that there is for example even now a large body " opinion in India which would condone ").

The same is agreed to.

Paragraph 132 is again read, as amended

The further consideration of paragraph 132 is postponed

Paragraph 133 is again postponed

Paragraph 134 is again read

It is moved by the Marquess of Linlithgow Page 66, line 27, to leave out ("women") and to insert ("wives or widows").

The same is agreed to.

Paragraph 134 is again read as amended

The further consideration of paragraph 134 is postponed

Paragraphs 135 to 137 are again postponed

Paragraph 138 is again read

It is moved by the Marquess of Linhthgow. Page 68 line 10, at the end to insert (' or (2) which affects religion or religious rites and usages")

The same is agreed to

Paragraph 138 is again read as amended.

The further consideration of paragraph 138 is postponed

Paragraph 139 is again read

Page 68, lines 11 to 19, to leave out from the beginning of the paragraph to ( We") in line 19 and to insert ( We do not think that the consent of the Governor should any longer be required to the introduction of legislation "which affects religion or religious rites and usages We take this view, not because we think that the necessity for such consent might prejudice "attempts to promote valuable social reforms, which has been suggested as a reason for dispensing with it, but because in our judgment legislation "of this kind is above all other such as ought to be introduced on the responsibility of Indian Ministers We have given our reasons elsewhere for holding that matters of social reform which may touch, directly or indirectly, "Indian religious beliefs can only be undertaken with any prospect of success by Indian Ministers themselves; and, that being so, we think it undesirable that their responsibility in this most important field should be shared with a Governor It has been objected that the mere introduction of legislation "affecting religion or religious rites and usages might be dangerous at times "of religious or communal disturbance, and might indeed itself produce such disturbance We observe bowever, a Proposal in the White Paper! whereby the Governor would be empowered, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with "ample safeguard against the danger to which we have referred, and in addition it would of course always be open to the Governor, in his discretion, to refuse his assent to any Bill which has been passed by the Legislature, "if in his opinion it is undesirable on any ground that it should become " law.")

It is moved by the Lord Rankeillour. As an amendment to the above amendment, line 13 of the amendment, after ('Governor'') to insert ("It must be remembered that the Governor has the right of veto in respect of all legislation, and in this case it would be open to him, if he "thought it right, to exercise this power in protection of the incrests of "minorities in accordance with his special responsibility")

The amendment, to the amendment, by leave of the Committee, is withdrawn

The original amendment is again moved.

The same is agreed to

I White Paper, Proposal 94.

Paragraph 139 is again read, as amended.

The further consideration of paragraph 139 is postponed.

Paragraphs 140 to 154 are again postponed.

Paragraph 155 is again read.

It is moved by the Marquess of Linlithgow. Page 78, lines 39 and 40, to leave out from ("that") in line 39, to the first ("the") in line 40.

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 78. line 41, to leave out ("so long as this is so ") and to insert ("this heing so ").

The same is agreed to.

Paragraph 155 is again read, as amended.

The further consideration of paragraph 155 is postponed.

Paragraphs 156 to 163 are again postponed.

Paragraph 164 is again read.

It is moved by the Marquess of Linhthgow. Page 83, line 35, to leave out ("(ii) the Governor-General's selection of Ministers;").

The same is agreed to.

Paragraph 164 is again read as amended.

The further consideration of paragraph 164 is postponed.

Paragraphs 165 to 313 are again postponed.

Paragraph 314 is again read.

It is moved by the Marquess of Linlithgow. Page 174, lines 37 to 43, to leave out from the beginning of line 37 to the end of the paragraph.

The same is agreed to.

Paragraph 314 is again read, as amended.

The further consideration of paragraph 314 is postponed.

Paragraphs 315 to 317 are again postponed.

Paragraph 318 is again read.

It is moved by the Marquess of Linlithgow. Page 176, line 47, to leave out ("town-bred") and to insert after ("pleaders") ("from the towns"). The same is agreed to.

Paragraph 318 is again read, as amended.

The further consideration of paragraph VA is postponed.

Paragraphs 319 to 453 and 1 to 516 are again postponed.

Paragraph 56 is again read.

It is moved by Sir Reginald Craddock. Page 26, line 40, to page 27, line 11, to leave out from ("taken.") in line 40, page 26, to the end of the paragraph on page 27.

The same is disagreed to.

It is moved by Sir Reginald Craddock. Page 27, after paragraph 56 to insert the following new paragraph:—

("56A. The separation of Sind from Bomhay is an old controversy but its constitution as a separate Governor's Province is a problem which has ansen out of the constitutional reform and has now become a focus of communal strife. Long before its creation into a separate Province came into prominence, the question whether it should he detached from Bombay and attached to the Punjah was at one time a serious issue. The Bombay Government was opposed to this step, but in the event of its separation demanded territorial compensation which would have dismembered other Provinces, and on account of their opposition the matter was dropped. The construction of the Sukkur Barrage, while bringing the creation of Sind into a separate Province into greater prominence, necessarily revives theissue as to whether a better alternative might not be found by its amalgamation with the Punjab. For the adoption of this latter alternative there are two important reasons. First because this amalgamation would bring the Indus River within the confines and

under the jurisdiction of a single Province and a single staff of engineering experts instead of leaving the utilisation of the Upper Indus under one, Government and the area commanded by the Sukkur system under another. This would provoke acute controversy between the two Provinces and between the interests of the upper riparian people in the Punjah and the lower riparian people in Sind. Once this question of the Indus supply was put under the control of a single administration, then the interests of both sets of people would weigh equally with the single Government responsible for both alike. Also incidentally the cost of the supervising staff might be considerably cheapened. The second reason is that the Punjab would be equally interested with Sind in the rapid colonisation of the large areas which are awaiting colonists and irrigation. We are informed that Sikh farmers of good class have already been attracted to the new areas in Sind. The last census of 1931, shows that there are now 18,000 Sikhs in Sind, and the influx of sturdy farmers of this description would be a very helpful asset to the progress of that This aspect of the Sind question has been strongly advanced hy Sir Henry Lawrence, who has served for 18 years in that Province and was Commissioner in Sind before he became an Executive Councillor of the Bombay Government. We regard it as an alternative proposal deserving the attention of the several Governments concerned before a final decision has been made in favour of the creation of a Sind Province. It has the further advantage that the railway connection between the Punjab and Karachi is more developed than that between Sind and Bombay, and it would give the Punjab a port of its own at Karachi. It would also ease the feeling amongst Hindus in a separated Sind of hopeless numerical inferiority to the Moslems. There can be no doubt about the genuineness of Hindu anxiety at finding themselves as they would describe it, at the mercy of a large fanatical Moslem population. Under impartial British rule they have, by superior education and wealth, ohtained a prominence in public affairs which would not otherwise have been possible, and they fear that under the new Constitution, especially if Law and Order be transferred, they will become victims of Moslem lawlessness and will steadily be ousted from their present position. These risks are by no means imaginary, for while in the towns they may be sufficiently numerous to protect themselves, it is otherwise in the villages, and even in the past the scattered Hindus in the rural areas have been the victims of dacoities, kidnapping and murder. In Bombay including Sind the ratio of Hindus to Moslems is nearly 4 to 1; in a separated Sind the ratio drops to but a little over 1 to 4. Hitherto, on the existing franchise, Hindus being wealthier, have had higher voting strength than their numerical proportion. With the lowering of the franchise they fear that Moslems will gain the ascendancy. There are only 230,000 persons who are literate in Sind, of whom the greater proportion consists of Hindus. It is believed everywhere that the decision to create the new Sind Province was a concession to Moslcm sentiment, and Moslems in other Provinces have espoused the cause of their Sind brethren by means of a division of territory which would secure them a large permanent majority over the Hindu. It is in our judgment open to much doubt whether we should be justified in making territorial adjustments which have the effect of turning a large majority into a small minority, and on this ground alone we think that the creation of Sind into a separate Province is inexpedient and likely to provoke violence and even bloodshed, which might have grave repercussions in many other parts of India. Apart, however, from these considerations, we regard the financial prospects as definitely unfavourable to the creation of Sind as a new Province at the present time. This argument was stressed by the Statutory Commission. Several estimates have been framed at different times of the probable deficit in the finances of a separated Sind, the extra expenditure entailed by the reformed Constitution there, and the probable duration of the period before Sind may

be expected to pay its way The development of irrigation under the Barrage in the first two or three years since it has been completed does not necessarily prove that its further development will continue with equal rapidity. Account must be taken of the reduced credit of the rural population under the effect of the calamitous fall in prices of agricultural produce, and even if the overhead charges of making Sind a Governor's Province are kept within the narrowest limits the fact remains that the taxpayers of India generally have to bear additional burdens in order to gratify Moslem pride Financial considerations, therefore, strongly indicate the advisability of postponing this change until the actual results of the Barrage, rather than estimates made now which may prove too optimistic, have rendered it certain that Sind has become self-supporting The fact that the Sukkur Barrage is proposed by the White Paper to constitute a special responsibility of the Governor, though valuable in securing in some measure the impartial administration of the colonisation rules or the appointment of suitable experts, has little bearing on the rapidity with which the land is taken up, for no Governor is able by the exercise of his authority to secure the influx of new colonists if the supply of such falls short of the capacity of the land reasons the better course appears to us that Sind should continue as a sub Province included in Bombay at least for ten years, during which time the advisability of attaching it to the Punjab can be thoroughly examined and the financial future of Sind, if constituted a new Province can be ascertained with reasonable accuracy.")

Objected to

On Question -

Contents (3)

Marquess of Salisbury Lord Rankeillour Sir Reginald Craddock. Not Contents (18)

Lord Chancellor. Marquess of Zetland Marquess of Linlithgow Marquess of Reading Earl of Lytton Lord Ker (M Lothian) Lord Hardinge of Penshurst Lord Hutchison of Montrose Mr Attlee Mr Butler Sir Austen Chamberlain Mr Cocks Mr Davidson Mr Foot. Sir Samuel Hoare Lord Eustace Percy Sir John Wardlaw Milne. Earl Winterton

The said amendment is disagreed to

Paragraph 57 is again postponed.

Paragraph 58 is again read

It is moved by Sir Reginald Craddock Page 28, to leave out paragraph 58 and to insert the following new paragraph —

("58 The problem of Orissa differs from that of Sind Long before the people of Orissa thought of themselves as a separate Province their anxiety was concentrated on the inclusion into Orissa of adjacent Orijaspeaking areas from the Madras Presidency and the Oriya States under the political administration of the Central Provinces, in addition to the

Sambalpur District which is divided from the rest of Orissa by a number of these States. The changes then effected were part of the Partition of Bengal, whereby Bengal proper was bereft of Eastern Bengal and thus consisted of Western Bengal, Bihar, Chota Nagpur and Onssa. In exchange for the Oriya-speaking States, Bengal gave to the Central Provinces five Hindi-speaking States. Upon the revocation of the Partition at the end of 1911, Bengal received back the Eastern Bengal Provinces and the non-Bengali-speaking territories of Bihar and Chota Nagpur, to which also was added Orissa, were made the new Province of Bihar and Orissa. No attempt was made, however, to separate the Origo-speaking part of Ganjam from the Madras Presidency in order to include it in Orissa proper. This has really been the standing grievance of Orissa, and it can be rectified by the addition of this territory whether Orissa is made into a separate Province or not. We consider that this grievance should be met by revision of the boundary between Orissa and the Madras Presidency, but the question of constituting a separate Province of Orissa by itself is an entirely separate one. Orissa, even with the territory now proposed to be added, is nothing but a Commissioner's Division in area and population, as well as in importance. The decision to take away the Oriya-speaking and the adjacent Hindispeaking States of the C.P. from the Governments now responsible for them and placing them under the Central Government has greatly reduced the charge which the Commissioner of Orissa has hitherto had in his keeping. The Sambalpur District and the Khariar Zamindan, (which is now to be added to Orissa), are no longer so convenient a portion of that Province now that the States have been transferred to the control of the Governor-General. Orissa is for the most part backward; it contains a large number of aboriginal tribes and it has not really the making of a full-fledged Governor's Province. It had much better be treated, if it is to be separated, as a Chief Commissioner's Province, in which case it might be allowed the privilege of a small Legislature, similar to that granted to the small Province of Coorg, but the better alternative in our opinion would be to leave it for ten years as a part of Bihar and Orissa, and during that period to examine at lessure whether it might not be more appropriately restored to Bengal. Financially, it is likely to be a deficit Province for an unknown period of time, and the extent of the deficit will be increased by the overhead charges of constituting it a separate Governor's Province. In addition to the reasons which we have mentioned, the constitution of this small linguistic Province will create a most inconvenient precedent, for next door to it is a large Telegu-speaking area. There are said to be six million people only in Orissa, of whom only about five million are Oriyaspeaking; but the Telegu area, which has already been given the name of the Andhra Province, contains no less than eighteen million Telegn speakers who are anxious to separate themselves from the Tamils of There are no more reasons for keeping the Oriyas outside Bengal than there are for refusing a similar claim made by the Telegu speakers of the Madras Presidency. Further than that, any movement towards creating linguistic areas, if encouraged now, would lead to linguistic claims which would entail the dismemberment of various Provinces. It would have the further very serious effect of running counter to the unity of India as a whole, for if different languages cannot compose their differences within the limits of a single Province, it can scarcely be expected of the infinitely greater number of linguistic divisions over India as a whole to compose their much greater differences in a joint Central Government. In other words, the distribution of India by linguistic Provinces would increase greatly those contrifugal tendencies which militate against the success of the whole Federal Scheme. Lastly, whatever may have been the motives of those who framed the constitution of the White Paper, the whole of India considers that the proposal to create a new Province of Sind is intended to placate Moslem sentiment, and similarly the creation of a new Province of

Orissa is intended as a counterpoise to gratify Hindu sentiment. It is in our opinion undersirable that the creation of small areas into new Provinces should be effected with any other consideration than the intrinsic merits of changes that are so expansive and place a hurden on the whole of the taxpayers of India for the sake of only ten million out of a total population (excluding Bnrma) of 338 million.")

The same is disagreed to.

Paragraph 58 is again read.

The further consideration of paragraph 58 is postponed.

Paragraphs 59 to 92 are again postponed.

Paragraph 93 is again read.

It is moved by the Marquess of Zetland, the Earl of Derby, the Lord Hardinge of Penshurst, the Lord Hutchison of Montrose, Major Cadogan, Sir Austen Chamberlain, and the Lord Eustace Percy. Page 44, lines 40 to 42, to leave out from ("notice.") in line 40 to the end of the paragraph.

The same is agreed to.

Paragraph 93 is again read, as amended.

The further consideration of paragraph 93 is postponed.

Paragraphs 94 to 162 are again postponed.

Paragraph 163 is again read.

It is moved by Sir Reginald Craddock. Page 83, line 29, at the end to insert "A point of difficulty arises with regard to the Royal Prerogative of mercy "in the case of death sentences. Under the Code of Criminal Procedure a condemned prisoner, whose petition has been rejected by the Local Government, can petition the Governor-General in Council, and under the procedure " laid down in the rules of husiness the member in charge of the Home Depart-"ment of the Government of India deals with the case and can reject such a petition without reference to the Viceroy, but if the Home Member wishes "to commute a death sentence he must refer the case to the Viceroy. It is "open to the Viceroy then either to concur with the Home Member or 'o consult the Law Member before passing his own orders, or to circulate the "case to the Council, but Constitutionally the Viceroy, as Governor-General, "cannot overrule the majority of the Council, if in disagreement with him. "Since 1916, however, the Royal Prerogative of mercy has been definitely "delegated to the Viceroy himself, thereby conferring upon him the power of overruling the Council in the matter of commuting a death sentence. Under "the proposed New Constitution, the Minister in charge of the Home Department will presumably exercise the same right of advising the Governor-General as to the commutation or otherwise of a death sentence, and the "question arises whether the exercise of the Royal Prerogative by the Governor-General in his capacity of Viceroy will override the Constitutional "power of the Minister in the direction of enabling the Viceroy to refuse "to commute the death sentence which the Minister advises should be commuted. We consider that the ultimate decision, whether to exercise "this prerogative or to let the law take its course, should rest with the "Viceroy alone ").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 163 is again read.

The further consideration of paragraph 163 is postponed.

Paragraphs 164 to 201 are again postponed.

Paragraph 202 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 101, line 12, after ("them") to insert ("as being impracticable at the present time,").

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 101 line 17, after ("that") to insert ("in present circumstances ").

The same is agreed to.

Paragraph 202 is again read as amended. The further consideration of Paragraph 202 is postponed.

New Paragraph 202A is again read.

It is moved by The Marquess of Reading, The Lord Ker (M. Lothian), and Mr. Foot. To leave out new paragraph 202A and to insert the

following new paragraph:---

(" 202A. We feel strongly, however, that it is not possible for Parlia- Indirect election ment to lay down to-day the exact method of constituting the central to be regarded in the nature of an legislature for any long period of time. The question has been reported by legislature for any long period of time. The question has been repeatedly examined both before the passage of the present Government of India Act by the Statutory Commission and by the Round Table Conferences and the Indian Franchise Committee in connection with the present proposals for reform. Throughout this whole period opinions have been deeply divided and no clear cut solution has emerged, as indeed was to be expected when an attempt is being made to create a federation on a scale and of a character hitherto without precedent. We have chosen the system of indirect election by the provincial legislatures, not hecause we do not feel the force of the arguments which can be hrought against it, but because we think that it is the arrangement which will give the most practical system at the outset of the Federation. Moreover, while it will be possible in future to pass from the indirect to the direct system of election should experience show that step to be advisable, the maintenance and still more the extension of the system of direct election to-day would be to commit India to a system which logically leads to adult suffrage before any way has been discovered of overcoming the insuperable objections to the gigantic constituencies containing bundreds of thousands of voters which are inevitable with adult franchise in India under the ordinary system of direct election. We feel that the ultimate solution may well he found in some variant either of the system whereby groups of primary voters elect secondary electors who vote directly for members of the federal assembly or of the system whereby those already elected to local bodies, such as village panchayats, are the voters who vote directly for members of that assembly. Systems of this kind apparently work with considerable success in many countries where conditions are not dissimilar to those in India. But the discovery of the best method of adapting those ideas to India's needs and of removing the obstacles which now stand in the way of their adoption is clearly one which should he made by Indians themselves in the light of their experience of the practical working of representative institutions under the new Constitution. We consider, therefore, that our proposals should be regarded as being in the nature of an experiment and that further consideration should be given to the question of the method of composing the central legislature in the light of practical working of the constitution. We do not propose that there should be any formal examination of the problem by a statutory Commission after any specific date, for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that Parliament should recognise that after sufficient time has elapsed to enable clear judgments to be formed of the way in which the constitution works and of the new political forces it has brought into being, it may be necessary to make amendments in the method of composing the central legislature, and we bope that if Indian opinion thinks modification is required the Indian federal legislature will lay its own proposals before Parliament in the form recommended in paragraphs 356 and 357 of this Report.")

The same is agreed to.

New paragraph 202A is again read.

The further consideration of paragraph 202A is postponed.

Paragraphs 203 to 316 are again postponed.

Paragraph 317 is again read.

It is moved by Sir Reginald Craddock. Page 176, lines 15 and 16, to leave out ("ultimately to the Central Government") and to insert ("after that to "the Governor-General in Council".)

The same is agreed to.

Paragraph 317 is again read as amended.

The further consideration of paragraph 317 is postponed.

Paragraph 318 is again read.

It is moved by Sir Reginald Craddock. Page 177, line 3, after (" for ") to insert (" permanent ").

The same is agreed to.

Paragraph 318 is again read as amended.

The further consideration of paragraph 318 is postponed.

Paragraphs 319 to 453 are again postponed.

Ordered, that the Committee be adjourned to Monday next at half-past Four o'clock.

### Die Lunae 23° Julii 1984

## Present:

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. EARQUESS OF ZETLAND. ARQUESS OF LINLITHGOW. ARL OF DERBY.

ARL OF LYTTON. ARL PEEL. ISCOUNT HALIFAX. ORD MIDDLETON. ORD KER (M. LOTHIAN). ORD HARDINGE OF PENSHURST. ORD RANKEILLOUR. ORD HUTCHISON OF MONTROSE.

Mr. ATTLEE. MR. BUTLER. MAJOR CADOGAN. SIR AUSTEN CHAMBERLAIN. Mr. Cocks. SIR REGINALD CRADDOCK. Mr. DAVIDSON.

Mr. FOOT. SIR SAMUEL HOARE. MR. MORGAN JONES. SIR JOSEPH NALL. LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE. EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read. The Proceedings of Friday last are read. Paragraphs 1 to 325 are again postponed. Paragraphs 326 to 329 are again read.

The following amendments are laid before the Committee.

Sir John Wardlaw-Milne to move. Paragraph 327, page 181, lines 7 to 15, to leave out from ("responsibility.") in line 7 to the end of the

paragraph.

Sir John Wardlaw-Milne to move. Paragraph 328, page 181, line 21, after ("enjoyed") to insert (", as an integral part of the British Empire,"); lines 23 and 30, to leave out ("Antonomy") in lines 23 and 30; line 34, to leave out ("unrestricted"); line 35, to leave out ("of the basis"); line 36, after ("proceed") to insert ("and which forms the basis of the

delegation of powers set out in the Convention itself.")
Sir John Wardlaw-Milne to move. Paragraph 329, page 182, lines
13 to 16, to leave out from ("countries.") in line 13 to "that" in line

16 and insert (" and ".)

The consideration of the said amendments is postponed,

It is moved by Sir Joseph Nall and the Earl of Derhy. Pages 180 to 182, to leave out paragraphs 326 to 329 inclusive, and to insert the following new paragraphs :-

'326. The importance attached in this country to this part of the Reasons why Indian Constitutional problem has been very much misunderstood in provision is India. We helieve our first duty is to define the problem with which we accessary. are dealing in such a way as to remove the grounds for much, if not all,

of the misunderstanding.

"The Second Round Table Conference in 1931 adopted a resolution to the effect that there should he no discrimination between the rights of the British mercantile community, firms and companies, trading in India, and the rights of Indian born subjects; witnesses who appeared before us spoke in the same sense; and the British-Indian Delegation in their Joint Memorandum state that on the question of principle there has always been a substantial measure of agreement in India. On the other hand, we have heen assured no less strongly hy those who

All amendments are to the Draft Report (vide infra paras. 1–42B, pp. 470–491; and vide supra paras. 43–453, pp. 64–253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521–544), showing on which pages of the Proceedings amendments to each paragraph can be found.

represent British commercial interests that they ask for no exceptional or preferential treatment of British trade as against Indian trade, and on this aspect of the matter their policy is one of a fair field and no favour. The question therefore resolves itself to a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned.

"It may be asked why, in view of this evidence of common agreement, it should be necessary to deal with the matter at all in the Constitution Act. There are, we believe, two very good and powerful reasons for doing so—one of a general juridical character and the other pointical. The juridical reason arises from the fact that the relations between India and the United Kingdom, after the passing of the Act, will be in every way exceptional. There will be no background of common usage or international law such as exists between two foreign countries, and by mutual consent influences both parties in their dealing with one another apart from any treaty engagements they may have exchanged.

"The second reason is political in the sense that it arises from the necessity of coping with deep-seated and widely held behefs, which must be satisfied if the reforms as a whole are to succeed. In India it has been freely suggested that H M Governmentare seeking to impose unreasonable fetters upon the future Indian legislature for the purpose of securing exceptional advantage to British at the expense of Indian commerce. The suggestion is without foundation, and can only be countered by clear proposals which will show how false it is. On the other hand, there have been statements of a very disturbing character made from time to time by influential persons in India which could not fail to give rise to suspicions and doubts in this country, thus making statutory provision by way of reassurance an evident necessity, without at all implying a behief on our part that it really is the accepted policy of any Indian political leaders to destroy or injure British commercial interests by unfair or discriminatory legislation or otherwise

Administrative Discrimination "327 Discrimination may be of two kinds, administrative or legis lative, and we propose in the first place to consider the administrative form

"We agree with the proposal in the White Paper that the Governor-General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have discriminatory effect, to intervene, and, if necessary, either to decline to accept their advice on (as the case may require) to exercise the special powers which flow from the possession of special responsibility ')

The Pierri Conventum. "328 Before considering the scope which should be given to provisions in restraint of legislative discrimination generally in matters other than tariffs and other regulations directly affecting imports of merchandise, we think it is essential to deal quite separately with that particular problem which quite obviously calls for treatment very different from that which is necessary or appropriate in such matter as company law, or internal taxation affecting British companies, persons, or property actually within the frontiers of India at the material time. In the case of tariffs or other regulations affecting imports, the problem is one of policy as well as practice

"We think it right to observe that it is not our intention that any of the provisions which we contemplate for the purpose of preventing discrimination, whether administrative or legislative, should be so utilised as to interfere with the recommendations made by the Joint Committee on the Bill of 1919 commonly called the Fiscal Convention "At the same time, fears have been expressed lest the unrestricted operation of this Convention might result, with no remedy available, in the impostition of penal tariffs upon British goods or the application on British goods of penally restrictive regulations, with the object, not of fostering Indian trade in a manner and to a degree which would be recognised as reasonable, but rather and primarily with the object of injuring and excluding British trade, possibly in order to put pressure on this country for political purposes, possibly to give expression to extreme political sentiments or for reasons of that general character

"We are satisfied that it was not in the minds of the authors of the Fiscal Convention and has never during the period of its operation been in the mind of His Majesty's Government, that the Convention should be invoked in aid of such a policy, and we have been assured by the Indian Delegates that there would be no desire in India that such freedom as they enjoy under the Convention should be utilised in future for a purpose so destructive of the basis of that conception of partnership npon which the whole of our recommendations proceed. In these circumstances we shall, in fact, be making no change in the existing fiscal relations between India and this country if we seek to make plain on the face of the Statute that it is not a legitimate or permissible use of the Fiscal Convention to discriminate against British trade as such. We think it essential that on this matter there should be no ground for misapprehension in future

"It is the more desirable that something of this nature should be done when it is borne in mind that a statutory definition of the position is often of itself sufficient to prevent disputes arising and that, apart from the terms of the Act, the relations between India and the United Kingdom in his particular respect will be nowhere expressly defined or even broadly indicated, as will be the case between India and foreign countries where treaty law and the accepted canons of international law and usage will apply

"We, therefore, recommend that to the special responsibilities of the Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows—

"The prevention, in connection with fiscal measures or measures for the control or regulation of import trade or with the administration of such measures, of the subjection of British goods imported into India from the United Kingdom to any form of discriminatory treatment, whether such discrimination should take the form of —

"(a) discrimination against UK products as compared with imports from other countries directly by means of differential rates of tariff, or indirectly hy means of differential treatment of various types of products,

or (g) discrimination against UK interests as compared with Indian interests by the attempted establishment on goods of UK origin of levels of import duty or other restrictions of a prohibitory or penal character in excess of the equitable requirements of the economic situation in India;

or (c) discrimination such as would arise by action in violation of any agreement subsisting at the time between the Governments of India and the U K as regards rates of tariff and margins of preference,

or (d) commercial or trade agreements with countries other than the United Kingdom which would place India under an obligation to treat the goods and merchandise of the UK less favourably than those of another country or other countries:

or (e) any other action having a discriminatory effect."

(C 14542)

The Governor-General's Instrument of Instructions. "329. But in making this recommendation we further recommend that the Governor-General should be given clear directions in his Instrument of Instructions as to the scope of the special responsibility in question.

"The instructions we contemplate would indicate that this special responsibility is not intended to affect the competence of the Indian Legislature and of his Government to develop their own fiscal and economic policy; that the duty imposed upon him by this provision is that of preventing imports from the United Kingdom from being subjected to specially unfavourable treatment in respect of such matters as customs duties, prohibitions, or restrictions (other than measures concerned with the preservation of Health); that he should understand that the Federal Government naturally enjoys complete freedom to negotiate with other countries for the securing of mutual tariff concessions, and that he has no functions in connection therewith unless and until tariff legislation is proposed which embodies discrimination against U.K. imports within the limits defined in our recommendations: and finally that he should be enjoined that it is his duty under this special responsibility not only to prevent discriminatory action, legislative or administrative, but also action which though not in form discriminatory is so in fact.")

The proposed new paragraphs are, by leave of the Committee, withdrawn. It is moved by the Lord Enstace Percy. Pages 180 and 181, to leave out paragraphs 326 and 327, and to insert the following new paragraphs:—

Definition of aroblem. ("326. The importance attached in this country to this part of the Indian constitutional problem has been much misunderstood in India. We believe that our first duty is to define it in such a way as to remove this misunderstanding. In our view the problem is divisible into two entirely separate issues. The only one of these issues dealt with in the White Paper is the question of administrative and legislative discrimination against British commercial interests and British trade in India. With this issue we deal in detail in later paragraphs."

The Fiscal

"327. The other issue, which we now proceed to consider, is that of discrimination against British imports. As is well known, the liscal relations between the United Kingdom and India have now been regulated for some thirteen years by the recommendations of the Joint Committee on the Bill of 1919—commonly known as the Fiscal Convention. It is a commonplace that the exact scope and effects of this Convention have afforded much ground for discussion, and that the Convention has not-as indeed could hardly have been expectedsucceeded in placing beyond controversy the rights and duties of the two parties to it. But, with the passing of a new Constitution Act on the lines of the recommendations which we make in this Report, the Convention, in its present form at all events, will necessarily lapse; and unless the Constitution Act otherwise provides, the Federal Legislature will enjoy complete fiscal freedom, with little in the nature of settled tradition to guide its relationship in fiscal matters with this country. The difficulties which would be likely to arise from this uncertainty would, moreover, find a fruitful source of increase in that atmosphere of misunderstanding to which we have alluded. suggested in India that, in seeking to clarify the fiscal relations between India and themselves, His Majesty's Government are seeking to impose unreasonable fetters upon the future Indian Legislature for the purpose of securing exceptional advantages for British, at the expense of Indian, trade. The suggestion is without foundation but can be countered only by clear proposals which will show how false it is. On the other hand, statements of a very disturbing character have been made from time to time by influential persons in India which have aroused suspicions and doubts in the United Kingdom. In these circumstances, appropriate provisions in the Constitution Act may serve the double purpose of facilitating the transition from the old to new conditions, and of reassuring sensitive opinion in both countries. Certainly, such provisions would in no way imply a belief that there is real ground for the apprehensions entertained on either side.")

The same are agreed to.

New puragraphs 326 and 327 are again read.

The further consideration of paragraphs 326 and 327 is postponed.

Paragraphs 328 to 330 are again read.

It is moved by Mr. Cocks and Mr. Morgan Jones. Page 181, line 22, to page 182, line 38, to leave out from the beginning of line 22, page 181, to the end of paragraph 330 on page 182 and to insert:—

("without any interference from Whitehall on any matters on which "the Government of India and the Indian Legislature are in agreement—"since the inauguration of the present Constitution in 1921.

"This followed on the Report of the Joint Committee of both Houses of Parliament of 17th November, 1919. Paragraph 33 of that Report said inter alia that:

'Nothing is more likely to endanger the good relations between 'India and Great Britain than a belief that India's fiscal policy is 'dictated from Whitehall in the interests of the trade and commerce 'of Great Britain. That such a belief exists at the moment there can be 'no doubt. That there ought to be no room for it in the future is 'equally clear . . .

'Whatever be the right fiscal policy for India, for the needs of her consumers as well as for her manufacturers, it is quite clear that she 'should have the same liberty to consider her interests as Great Britain,

'Australia, New Zealand, Canada and South Africa.'

"His Majesty's Government accepted this recommendation and it "was intimated to the Government of India by the Secretary of State on "30th June, 1921. The Statutory Commission in their Report quote the "statement made by the Secretary of State in March, 1921, that:—

'After the Report by an authoritative Committee of hoth Houses 'and Lord Curzon's promise in the House of Lords, it was absolutely 'impossible for mo to interfere with the right which I believe was wisely 'given and which I am determined to maintain—to give to the Government of India the right to consider the interests of India first just as 'we, without any complaint from any other parts of the Empire, and 'the other parts of the Empire, without any complaint from ue, have 'always chosen the tariff arrangements which they think best fitted for 'their needs, thinking of their own citizens first.''

"In the course of his evidence before us, Sir Charles Innes, who, before taking up his duties as Governor of Burma, was on the Council "of the Governor-General of India as Commerce Member, said in regard "to India's attitude to the Ottawa agreements:

'I think it was mainly due to the fact that the Indians realized 'that it was for themselves to decide whether or not they would ratify 'that agreement. In the old days, before we introduced this principle 'of discriminating protection, every Indian thought that Britain kept 'India a free-trade country in the interest of her own trade. When the 'Fiscal Convention was introduced and when we passed a Resolution 'in favour of discriminating protection, and the first Steel Bill was 'Passed, we at once transferred all that from the political sphere to the economic sphere, and in recent years in the Indian Legislative 'Assembly more and more we have been creating a strong Free Trade 'Party. It was getting more and more difficult for me to pass Protection 'Bills. I think that is all to the good; it shows the value of responsibility, and I am perfectly sure that if we had not taken that action,

'you would never have got the Indian to agree to the British preference 'on steel, or to the Ottawa agreement, and it seems to me a very good 'example of the stimulating effect of responsibility.'

"We realize the importance of giving full weight to this evidence on "the value of placing responsibility on the Indian Legislature, coming, as "it does, from one who is in a position to speak with authority.

"The Statutory Commission further point out that:-

'An understanding analogous to the fiscal convention has been 'arrived at in one other region. The Secretary of State has relinquished 'his control of policy in the matter of the purchase of Government 'stores for India, other than military stores. The Governments in 'India, in agreement with the legislatures, are now free to buy stores in India, in this country, or abroad, as seems best to them, and the 'Secretary of State, though he is by statute responsible to Parliament, 'has undertaken not to intervene.'

"There is much force in Mr. Baldwin's words :---

'All the safeguards are being examined by the Joint Select Committee, but whatever safeguards we have the real safeguard is the 'maintenance of goodwill. If there is not a basis of goodwill, your 'trade will eventually wither away, and I regret to say that some of the 'measures which have been suggested and which Lancashire people 'have been asked to support, have, in my judgment, been calculated to 'destroy rather than to further any possibility of that goodwill between 'Lancashire and India which we can get, which we ought to get, and 'which we cannot do without. . . .

'The boycott has died away . . , by a conviction in the minds of the Indians themselves that we were going to deal honourably with them and keep our word about getting on with the reforms.<sup>1</sup>"

"The same idea is expressed in the Memorandum submitted to us by "Sir Tej Bahadur Sapru:—

'The best safeguard that Lancashire, or for the matter of this 'England, can have for trade and commerce in India, is the goodwill 'of the people of India.'

"We think, therefore, that the time has now come to recognize in the "Constitution Act the right and the responsibility of India to settle her "own fiscal affairs as freely as and on a basis of equality with Great Britain "and the Dominions.

"We agree with the British Indian delegates in their Memorandum submitted to us, that the question of Commercial Discrimination might be left to the commercial interests in India and England who would doubtless be able to evolve a friendly settlement by negotiation. Failing that, we agree that it might be provided in the Constitution Act that anything of the nature of discriminatory legislation should require the previons assent of the Governor-General given in his discretion. We think that the formula proposed by the Indian Delegates should be adopted, namely, that the Governor-General should not be entitled to refuse his assent unless he is assured that the object of the legislation is, in the words of the Montagu-Chelmsford Report, 'not so much to promote Indian commerce as to injure British commerce,' or, as proposed by the Statutory Commission, 'in order to prevent serious prejudice to one of more sections of the community as compared with other sections.")

### Objected to.

<sup>1</sup> Vol. I, p. 356, para. 402.

Record No. 10, p. 256, para. 42 (Vol. III, Session 1932-33).

453

Contents (2).

Mr. Cocks. Mr. Morgan Jones. Not Contents (23).

Lord Archbishop of Canterbury. Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Earl of Derby. Earl of Lytton. Earl Peel. Viscount Halifax. Lord Middleton. Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Sir Joseph Nall Lord Eustace Percy. Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy. Pages 181 and 182 to leave out paragraphs 328 and 329 and to insert the following new paragraphs:-

("328. But in making our recommendations to this end, we wish The Fiscal to make it clear at the outset that we contemplate no measure which the new Conwould interfere with the position attained by India as an integral part of strutton. the British Empire, through the Fiscal Convention. Fears have, indeed, been expressed lest the exercise of powers by the Indian Legislature which the Convention contemplated might result in the imposition of penal tariffs on British goods or in the application to them of penalty restrictive regulations with the object not of fostering Indian trade, but of injuring and excluding British trade. The answer to these fears is that the Convention could never, in fact, have been applied in aid of such a policy; and we have been assured by the Indian Delegates that there will be no desire in India to utilise any powers they may enjoy under the new Constitution for a purpose so destructive of the conception of partnership upon which all our recommendations are based. But, if this be so, it would be clearly of great advantage to allay the fears of which we have spoken by a declaration through and under the Construction Act of the principles governing the relations between the two countries. The machinery of the Governor-General's special responsibilitios, supplemented by his Instrument of Instructions, offers India and the United Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application.

"329. We therefore recommend that to the special responsibilities of Governor General should the Governor-General enumerated in the White Paper there should be have a special added a further special responsibility defined in some such terms as responsibility of the special responsibility defined in some such terms as responsibility of the special responsibility of th follows:—'The prevention of measures, legislative or administrative, discrimination which would subject British goods, imported into India from the United Kingdom, to discriminatory or penal treatment . But, as it is important important

that the scope which we intend to be attached to the special responsibility so defined should he explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor-General's Instrument of Instructions should give him full and clear guidance. It should he made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy; that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions; and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if, in his opinion, the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived not in the economic interests of India but with the object of injuring the interest of the United Kingdom. It should further be made clear that the 'discriminatory or penal treatment' covered by this special responsibility includes both direct discrimination (whether by means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products; and that the Governor-General's special responsibility could also be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described. In all these respects, the words would cover measures which, though not discriminatory or penal in form, would be so in fact.

Principles of fature trade relations between India and United Kragiom,

" 329A. But although the Instrument of Instructions affords the means of defining more fully than would be possible in the Act itself the scope and purpose of the special responsibility which the Act should confer, even this document cannot conveniently be utilised as the means of explaining the broad principles upon which in our view, the future trade relations between India and the United Kingdom should be based. We wish therefore to express our own conception of these principles. We think that the United Kingdom and India must approach their pade problems in a spirit of reciprocity, which views the trade between the two countries as a whole. Both countries have a wide range of needs and interests; in some of these each country is complementary to the other, while in some each bas inevitably to look rather to a third country for satisfactory arrangements of mutual advantage. The reciprocity which, as partners, they have a right to expect from each other consists in a deliberate effort to expand the whole range of their trade with each other to the fullest possible extent compatible with the interests of their own people. The conception of reciprocity does not preclude either partner from entering into special agreements with third countries for the exchange of particular commodities where such agreements offer it advantages which it cannot obtain from the other; but the conception does imply that, when either partner is considering to what extent if can offer special advantages of this kind to a third country without injustice to the other partner it will have regard to the general range of benefits secured to it by the partnership, and not merely to the usefulness of the partnership in relation to the particular commodity under consideration at the moment.

Discrimination against British trade in India. "329B. We turn now to the other issue presented by this section of our Report, namely, the prevention of discrimination against British trade in India. The Second Round Table Conference in 1931 adopted a resolution to the effect that there should be no discrimination between the rights of the British mercantile community, firms and companies, trading in India and the rights of Indian-horn subjects. Witnesses who appeared before in spoke in the same sense and the British Indian Delegation, in their joint memorandum, state that on the question of principle there has

always been a substantial measure of agreement in India On the other hand, we have been assured no less strongly by those who represent British commercial interests that they ask for no exceptional or preferential treatment for British trade as against Indian trade Their policy is, in fact, one of a fair field and no favour The question, therefore, resolves itself into a consideration of the best method of giving practical effect to the avowed policy and intentions of all concerned. It may, indeed, be asked why, in view of the assurances of which we have spoken, it is necessary to deal with this matter at all in the Constitution Act, and to this our answer must be that here again utterances have been made which could not fail to give rise to suspicions and doubts, and that statutory provision by way of re-assurance is an evident necessity

"329C Discrimination may be of two kinds, administrative or Administrative legislative. We are satisfied that, with regard to administrative discrimination, a statutory prohibition would be not only impracticable, but useless, for it would be impossible to regulate by any statute the exercase of its discretion by the Executive We agree, however, with the proposal in the White Paper1 that the Governor General and Governors in their respective spheres should have imposed upon them a special responsibility for the prevention of discrimination, thus enabling them, if action is proposed by their Ministers which would have a discriminatory effect, to intervene and, if necessary, either to decline to accept their advice or (as the case may require) to exercise the special powers which flow from the possession of a special responsibility. But, if our subsequent recommendations on the subject of legislative discrimination are accepted, we think it should be made clear in the Constitution Act that this special responsibility extends to the prevention of administrative discrimination in any of the makers in respect of which provision against legislative discrimination is made under the Act ")

The same is agreed to

New Paragraphs 328 and 329 are again read as amended

The further consideration of paragraphs 328 and 329 is postponed.

Paragraph 330 is again read and postponed.

Paragraph 331 is again read.

It is moved by Sir John Wardlaw-Milne Page 183, line 2, after dominions") to insert ("These must be settled by mutual agreement, when the position of those persons and companies of Dominion origin already engaged in professions or trade in India will no doubt be specially considered.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 331 10 again read

The further consideration of paragraph 331 is postponed

Paragraph 332 is again read

It is moved by Mr Morgan Jones, Mr Cocks and Mr. Attlee Page 183, hnes 10 to 12, to leave out from ("(1)') in line 10 to ("; but") in line 12, and to insert (" that the consent of the Governor-General given in his discretion should be required to the introduction in the Federal Legislature and the "Provincial Legislature of any measure of the discriminatory nature set Out in Proposals 122 and 123 of the White Paper ")

The same is disagreed to.

It is moved by Mr Morgan Jones, Mr Cocks and Mr Attlee Page 183, lines 15 to 21, to leave out from ("elsewhere") in line 15 to the end of the paragraph.

The same is disagreed to.

Paragraph 332 is again read

The further consideration of paragraph 332 is postponed.

<sup>1</sup> White Paper Proposals 18 and 70

Paragraph 333 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee and Mr. Cocks. Page 183, to leave out paragraph 333.

The same is disagreed to.

Paragraph 333 is again read.

The further consideration of paragraph 333 is postponed.

Paragraph 334 is again read and postponed.

Paragraph 335 is again read.

It is moved by Sir John Wardlaw-Milne. Page 184, line 2, to leave out (" might ") and to insert (" should ").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 184, line 3, to leave out ("should not") and to insert ("are not to").

The same is agreed to.

It is moved by Mr. Cocks and Mr. Morgan Jones. Page 184, line 6, at the end to insert ("except in the case of coastal trade where we feel that it would "be a sufficient safeguard against unfair discrimination if the previous "consent of the Governor-General were required to any such legislation").

Objected to.

On Question:-

Contents (2).

Mr. Cocks. Mr. Morgan Jones. Not Contents (21).

Lord Archbishop of Canterbury. Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Earl of Derby. Earl Peel. Lord Middleton. Lord Ker (M. Lothian). Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy. Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

Paragraph 335 is again read as amended.

The further consideration of paragraph 335 is postponed.

Paragraph 336 is again read

It is moved by Sir Joseph Nall and the Earl of Derby. Page 184, paragraph 336, lines II to 19, to leave out from ("India;") in line II to the end of the paragraph.

The same is agreed to.

23° Julii 1934

Paragraph 336 is again read, as amended. The further consideration of paragraph 336 is postponed.

Paragraph 337 is again read.

It is moved by Sir John Wardlaw-Milne. Page 184, lines 31 to 34, to leave out from ("drawn") in line 31 to ("subsequently") in line 34 and to insert ("on the one hand, between firms or companies, whether domiciled or regis-"tered in India or in the United Kingdom, which at the date of the Act "authorising the grant are already engaged in India in the branch of trade or "industry which it is sought to encourage or which subsequent to the passing " of the Act acquire a business in India previously so engaged and, on the other "hand, those firms or companies which desire to engage in that branch of " trade or industry ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milne. Page 184, line 39, after (" as ") to insert ("the character of the enterprise will allow and ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milne. Lines 39 to 41, to leave out from (" former") in line 39 to (" the ") in line 41.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 337 is again read.

The further consideration of paragraph 337 is postponed.

Paragraph 338 is again read.

It is moved by Mr. Cocks, Mr. Attlee, and Mr. Morgan Jones. Pages 184 and 185, to leave out paragraph 338.

Objected to.

On Question.

Contents (3).

Mr. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (17).

Marquess of Salisbury.

Marquess of Zetland.

Marquess of Linlithgow.

Earl of Derby.

Lord Middleton.

Lord Ker (M. Lothian).

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain,

Sir Reginald Craddock.

Mr. Davidson.

Sir Samuel Hoare.

Sir Joseph Nall.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

The Earl Winterton did not vote.

The said amendment is disagreed to.

Paragraph 338 is again read.

The further consideration of paragraph 338 is postponed.

Paragraphs 339 to 345 are again read and postponed.

Paragraph 346 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 190, line 32, at the end to insert ("The same principle should apply to members of the "R.A.M.C. and of the R.A.F. Medical Service.")

The same is agreed to.

Paragraph 346 is again read as amended.

The further consideration of paragraph 346 is postponed.

Paragraphs 347 to 453 are again postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock.

# Die Martis 24° Julii, 1984.

#### Present:

LORD ARCHBISHOP OF CANTERBURY.

MARQUESS OF SALISBURY MARQUESS OF ZETLAND MARQUESS OF LINLITHGOW.

MARQUESS OF READING. EARL OF DERBY

EARI PELL Viscount Halifax. LORD MIDDLETON.

LORD KER (M LOTHIAN)

LORD HARDINGE OF PENSHURST.

LORD RANKEILLOUR

LORD HUTCHISON OF MONTROSE

MR BUTLER Major Cadogan

SIR AUSTLN CHAMBERLAIN. SIR REGINALD CRADDOCK

MR DAVIDSON. MR FOOT.

SIR SAMUEL HOARE MR MORGAN JONES LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read

The Proceedings of yesterday are read.

Paragraphs 1 to 56 are again postponed

Paragraph 57 is again read

It is moved by the Lord Eustace Percy Page 27, lines 38 and 39, to leave out from ("Province") in line 38 to ("In") in line 39 and to insert ("The alternative of a union between Sind and the Punjab has long been discussed, "and there are very strong arguments in favour of it, especially in view of the Joint interest of the two territories in the waters of the Indus Unfortunately, this alternative now seems to be opposed by practically all sections "of opinion concerned On a review of all the factors in the problem, we have reached the conclusion that the constitution of Sind as a separate Governor's "Province is the best solution possible in present circumstances")

The same is agreed to

Paragraph 57 is again read, as amended.

The further consideration of paragraph 57, a postponel.

Paragraphs 58 to 75 are again postponed.

Paragraph 76 is again read.

It is moved by Sii Samuel Hoare and Mr Butler Page 36, line 25, after ("word") to insert ( Nevertheless to prevent misunderstanding, we recommend that the Instruments of Instructions should make this plain, and further that this special responsibility is not intended to enable the Governor to stand in the way of social or economic reform merely because it is resisted "by a group of persons who might claim to be regarded as a minority"). The same is agreed to

Paragraph 76 is again read as amended

The further consideration of paragraph 76 is postponed.

Paragraphs 77 to 121 are again postponed

It is moved by Mr Butler and Sir Samuel Hoare Page 60, after paragraph 121 to msert the following new paragraph -

('121A We have given careful consideration in this connexion to the spen number of seats to be allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to Labour in the new Provincial Legisla-Any material alteration in the number of seats allotted to special

All amondments are to the Draft Report (wide infra, paras 1-42B, pp 470-491, and add supple paras 43-453, pp 64-253) and NOT to the Report as published (Vol. I, Part I) Ments to each paragraph can be found.

interests would inevitably involve a reopening of the Communal Award. and we have indicated above the objections to be seen to this. But we are in any case of opinion that the representation proposed in the White Paper for landlords, commerce and industry, universities and labour may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them We observe in particular that the representation of labour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38, the present marked difference between the representation of labour and of commerce and industry being thus very substantially reduced Having regard to this, to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any rate represent labour interests), and to the extension of the franchise, which will bring on the electoral roll large numbers of the poorer and of the labouring classes, we are of opinion that the position of labour, the importance of which we fully recognise, is adequately safeguarded under the proposals embodied in the White Paper ")

The same is agreed to

New paragraph 121A is again read

The further consideration of paragraph 121A is postponed

Paragraphs 122 to 173 are again postponed

Paragraph 174 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 88, line 15, to leave out ("—Federal on Provincial—").

The same is agreed to

It is moved by Sir Samuel Hoare and Mr Butler Page 88, lines 23-25, to leave out from ('suggests') in line 23 to ('but') in line 25 and to injert ("'a statutory Committee of Indian Defence constituted on the lines of the "Committee of Imperial Defence")

The same is agreed to

It is moved by Sir Samuel Hoare and Mr Butler Page 88, line 27, to leave out ("that very fact") and to insert ('the elasticity of its constitution')

The same is agreed to

It is moved by Sir Samuel Hoare and Mr Butler Page 88, line 30, to leave out ("A consultative body established") and to insert (An advisory body "constituted")

The same is agreed to

It is moved by Sir Samuel Hoare and Mr Butler Page 88, line 30, after ("body") to insert (similar to the Committee of Imperial Defence")

The same is agreed to.

Paragraph 174 is again read, as amended

The further consideration of paragraph 174 is postponed

It is moved by Sir Samuel Hoare and Mr Butler Page 88, after paragraph 174 to insert the following new paragraph —

("174A In this connexion the question has also been raised of estiblishing a Standing Defence Committee of the Legislature. While we are not unmindful of the advantage of taking steps in this way to build up an informed opinion on Defence matters in the Legislature, we consider that the question is pre-eminently one to be settled by the Federal Legislature itself, and this principle should, in our view, apply generally to all proposals for establishing Standing Committees in connexion with various fields of administration."

The amendment, by leave of the Committee, is withdrawn.

Paragraphs 175 to 187 are again postponed

Paragraphs 188 to 193 are again considered.

It is moved by the Lord Eustace Percy. Pages 94 to 98, to leave out paragraphs 188-193 inclusive and to insert the following new paragraphs:-

("188. We have considered in an earlier part of our Report the problem of the relations between the Executive and the Legislature of a Province, and those remarks apply mutatis mutandis to the relations between the Federal Executive and Legislature. It is only necessary here to refer briefly to two special complications which are introduced into the Federal problem; the existence of the Governor-General's Reserved Departments and the question of the representation of the States in the Ministry. On the first point, we have already spoken frankly of the difficulties presented by a system of dyarchy. We can only repeat that, faced by a choice in which every conceivable alternative involves some division of responsibility and some danger of friction, we recommend the alternative which draws the line of division at Defence and Foreign Affairs as corresponding most nearly with the realities of the situation; that, of these, the crucial question, so far as the Legislature is concerned, is Defence; and that on this question we regard an All-India Federation as the best means of ensuring that the Central Legislature, while discharging its legitimate function of discussion and criticism, will not (in the phrase of the Statutory Commission) seek 'to magnify its functions in the reserved field '.

"189. On the second point, it will be observed that, under the White and of composite Paper proposals, the Governor-General is to be directed by his Instrument of Instructions to include, 'so far as possible', in his Ministry, not only members of important minority communities, but also representatives of the States which accede to the Federation. It may be thought that this proposal runs the risk of adding to the possible dangers of communal representation in the Ministry, to which we have referred in speaking of the Provinces, the further dangers of territorial representation. We can scarcely doubt that State representation will always be regarded by the States themselves as an essential element in every Administration, and this fact may be thought likely to retard the growth of political parties, in the true sease, even more at the Centre than in the Provinces; for the Federal Legislature, though intended to be representative of India as a whole, will itself be largely based, in any case, on communal representation. In these circumstances, we do not overlook the possibility that, in place of an executive which propounds, and a legislature which deliberates upon, a national policy, there may be found two bodies each tending to become, in a classic phrase, 'a congress of ambassadors from different and hostile interests, which interests each must maintain as an advocate and agent against other agents and advocates.' This, however, is a common feature of all Federations. Few, if any, have in practice found it possible to constitute an Executive into which an element of territorial representation does not in some sense enter, and in the Swiss Constitution the principle of such representation is explicitly laid down; so that to advance this as an argument against the White Paper proposals would be, in effect, to reject an All-India Federation even as an ultimate ideal. Moreover, the limitation of the functions of the Federal Executive to matters of essentially All-India interest is calculated to minimise the dangers of both communal and territorial representation. Tariffs and excise duties, currency and transport are national, not communal questions; and it is not unreasonable to assume that any clash of interest with regard to them will tend in future to have an economic rather than a communal origin There will, therefore, be centripetal as well as centrifugal forces; and it seems to us indeed concervable that, until the advent of a new and hitherto nuknown alignment of parties, a central Executive such as we have described may even come to function, as we

believe that the Executive of the Swiss Confederation functions, as a kind of husiness committee of the Legislature.")

Objected to.

On Question:-

Contents (18).

Lord Archhishop of Canterbury.
Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.

Earl of Derby. Earl Peel.

Viscount Halifax. Lord Ker (M. Lothian).

Lord Hardinge of Penshurst.

Lord Hutchison of Montrose.

Mr. Butler. Major Cadogan.

Sir Austen Chamberlain.

Mr. Davidson. Sir Samuel Hoare.

Lord Eustace Percy. Sir John Wardlaw-Milne.

Earl Winterton.

Mr. Morgan Jones did not vote.

The said amendment is agreed to.

New paragraphs 188 and 189 are again read.

The further consideration of paragraphs 188 and 189 is postponed.

Paragraphs 194 to 206 are again postponed.

Paragraph 207 is again tead.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 104, line 10, after ("population.") to insert ("We have been given to understand that, while "susceptible of minor adjustment in a few particulars, the scheme has met "with a large measure of support among the States.")

The same is agreed to.

Paragraph 207 is again read, as amended.

The further consideration of paragraph 207 is postponed.

Paragraphs 208 to 214 are again postponed.

Paragraph 215 is again read.

It is moved by the Marquess of Linlithgow. Page 107, line 13, to leave out ("Money Bills"); line 15, after ("responsibilities,") to insert ("or would affect the financing of the Federal Government's requirements").

The same are agreed to.

Paragraph 215 is again read, as amended.

The further consideration of paragraph 215 is postponed,

Paragraphs 216 to 218 are again postponed.

Paragraph 219 is again read.

It is moved by the Lord Eustace Percy. Page 109, to leave out paragraph 219 as amended and to insert the following new paragraph:—

("219. We are of opinion that the proposals in the White Paper on this subject require modification in two directions. In the first place, the White Paper draws no distinction between the execution of Federal Acts with respect to subjects on which the Federal Legislature is alone competent to legislate (List I) and the execution of Federal Acts in the

Not Contents (4).

Marquess of Salishury. Lord Middleton. Lord Rankeillour. Sir Reginald Craddock.

concurrent field (List III) It is evident that in its exclusive field the Federal Government ought to have power to give directions—detailed and specific if need be-to a provincial Government as proposed in the White Paper But it is much more doubtful whether it should have such power in the concurrent field. The objects of legislation in this field will be predominantly matters of provincial concern, and the agency by which such legislation will be adminstered will be almost exclusively a provincial agency The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience, and, if this procedure were to carry with it automatically an extension of the scope of federal administration, the Provinces might feel that they were exposed to dangerous encroachment On the other hand. the considerations of practical convenience which would prompt the use of the Federal Legislature in this field will often be the need for securing nniformity in matters of social legislation and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration. We think the solution is to be found in drawing a disfunction between subjects in the concurrent list which, on the one hand, relate, broadly speaking to matters of social and economic legislation, and those which, on the other hand, relate mainly to matters of law and order, and personal rights and status. The latter form the larger class, and the enforcement of legislation on these subjects would for the most part be in the hands of the Courts or of the provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the Provinces In these matters, therefore we think that the Federal Government should have in law, as they could have in practice no powers of administrative control The other class of concurrent subjects consists mainly of the regulation of mines factories, employers' liability and workmen's compensation, trade umons, welfare of labour, industrial disputes, infectious diseases, electricity, and cinematograph films. In respect of this class, we think that the Federal Government should, where necessary, have the power to issue general directions for the enforcement of the law, but only to the extent provided by the Federal Act in question In view of the manner in which we propose to constitute the Federal Legislature, it is improbable that a body so representative of provincial opinion will sanction any unreasonable encroachment upon the provincial field of action, but as a further safeguard against such encroachment we think that any clause in a statute conferring such powers should require the previous sanction of the Governor General ")

The same is agreed to

New paragraph 219 is again read.

The further consideration of paragraph 219 is postponed.

Paragraphs 220 to 244 are again postponed.

Paragraph 245 is again read.

It is moved by the Lord Eustace Percy Page 147, lines 7 to 13, to leave out from the beginning of the paragraph to the end of line 13, and to insert ("The Provincial claim to income tax has been given added impetus by the attitude of the States in the matter of direct taxation. The entry of the "States into the Federation removes, indeed, one very serious problem")

The same is agreed to.

Paragraph 245 is again read, as amended.

The further consideration of paragraph 245 is postponed.

Paragraphs 246 to 280 are again postponed

Paragraph 281 is again read.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 35, after ("further") to insert ("special"), and after ("required") to insert ("for members of the Secretary of State's services").

The same are agreed to.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 160, line 36, after (" in ") to insert (" the insertion of a special provision ").

The same is agreed to.

Paragraph 281 is again read, as amended.

The further consideration of paragraph 281 is postponed.

Paragraph 283 is again read.

It is moved by The Lord Eustace Percy and Major Cadogan. Page 161, to leave out paragraph 283 and to insert the following new paragraphs:—

Status of Public Services. ("283. While we consider that the White Paper provides adequately for the special protection of members of the Secretary of State's Services, we are not fully satisfied that the status of other members of the Public Services, and of those Services as a whole, has been made sufficiently clear either in the White Paper or in any of the investigations and discussions which have led up to its preparation. We have already discussed in paragraph 89 the measures necessary to safeguard the moral and efficiency of the Police Service, including its subordinate ranks. In paragraphs 321-325 we shall make certain special proposals in regard to judicia, appointments. In addition, however, to these special recommendations, we think it our duty to make certain general observations on the future of the Public Services as a whole.

All India, Central and Provincial Services are all Crown Services.

"283A. It is natural that the process by which, during recent years, provincial service officers have been gradually substituted for All-India officers in the transferred departments and greater powers of control have been delegated to the Provincial Governments should have tended to create a false distinction between the status of the All-India Services and that of the Provincial Services. The tendency has almost inevitably been to regard the Provincial Services as having ceased to be Crown Services, and as having become Services of the Provincial Governments. This tendency has been emphasised by the argument, frequently advanced and accepted in the past both by Indians and Englishmen, that Provincial self-government necessarily entails control by the Provincial Government over the appointment of its servants. This argument has, no doubt great logical force, but it runs the risk of distorting one of the accepted principles of the British Constitution, namely, that civil servants are the servants of the Crown, and that the Legislature should have no control over their appointment or promotion and only a very general control over their conditions of service. Indeed even the British Cabinet has come to exercise only a very limited control over the Services, control being left very largely to the Prime Minister as, so to speak, the personal adviser of the Crown in regard to all service matters. The same principle applies, of course, equally to the Services recruited by the Secretary of State for India, though this fact has been sometimes obscured by inaccurate references to the control of Parliament over the All-India Services. But whatever misunderstandings may have arisen in the past as to the real status of the Provincial Services, there ought to be no doubt as to their status under the new Constitution. We have already pointed out that, under that Constitution, all the powers of the Provincial Govern ments, including the power to recruit public servants and to regulate their conditions of service, will be derived, no longer by devolution from the Government of India, but directly by delegation from the Crown, i.e., directly from the same source as that from which the Secretary of State derives his powers of recruitment. The Provincial Services, no less than the Central Services and the Secretary of State's Services will. therefore, be essentially Crown Services, and the efficiency and moral of those Services will largely depend in the future on the development in

India of the same conventions as have grown up in England

"283B But, if such conventions are to develop in India as in England, Governor they must develop from the same starting point, from a recognition that the Governor, as the personal representative of the Crown and the head be under t of the executive government, has a special relation to all the Crown Services

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the will, indeed, be generally bound to act in that relation on the advice

the Ministers cubicat to the design of the Ministers cubicat to the design of the manufacture of the manufacture cubicat to the design of of his Ministers, subject to his special responsibility for the rights and Services legitimate interests of the Services, but his Alinisters will be no less bound respectively to remember that advice on matters affecting the organisation of the permanent executive services is a very different thing from advice on matters of legislative policy, and that the difference may well affect both the circumstances and the form in which such advice is tendered think, therefore, that the Constitution should contain in its wording a definite recognition of the Governor-General and the Governors respectively as, under the Crown, the heads of the Central (as distinct from the All-India) and Provincial Services Appointments to these Services would accordingly run in the name of the Governor-General and Governor respectively, and it would, therefore, follow (see paragraph 277 above) that no public servant appointed by the Governor-General or Governor will be subject to dimissal, save by order of the Governor-General or Governor

" 283C But, further than this, it will, in our view, be essential Status and that the Central and Provincial Legislatures respectively should give and Provincial Legislatures respectively should give and Province. general legal sanction to the status and rights of the Central and Services not Provincial Services The Special responsibility of the Governor-General and Governors would, of course, in any case, extend to securing Services the legitimate interests as well as the rights of members of these Services, out it is on all grounds desirable that the Executive Government as a whole should be authorised and required by law to give these Services the necessary security The principal existing rights of members of these Services are set out in List II of Appendix VII of the White Paper We think that the Legislatures, in passing Provincial Civil Service Acts authorising and requiring the Executive Government to give these Services the necessary security, would be well advised to consider whether, to meet the new conditions, List II of Appendix VII of the White Paper should be enlarged by appropriate additions from List I of the same Appendix wherein are set out the principal existing rights of officers appointed by the Secretary of State In our view the status and rights of the Central and Provincial Services should not be, in substance, inferior to the status and rights of persons appointed by the Secretary of State in regard to the two main points covered by List I These two points are, protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion, and, secondly, protection against such arbitrary alterations in the organisation of the Services themselves as might damage the professional prospects of their members generally On the first point, these Provincial Civil Service Acts could not, indeed, determine in detail the rates of pay, allowances and pensions, and the conditions of retirement of all Civil Servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure Such Acts could, however, confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide definitely that "canvassing" for promotion or appointments shall disquality the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their

general organisation, yet the moral of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers upon the Executive by law the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance

Votability of salaries, etc., of Central and Provincial Services.

"283D There is, however, one existing right of officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to non-votability of salaries and pensions. There is, indeed, nothing derogatory again, to the rights and powers of the Legislature in the adoption of a special procedure similar to the Consolidated Fund Charges procedure of the British Parliament, under which certain salaries are authorised by permanent statute instead of being voted annually on estimates of supply, and this is, in fact, generally recognised to be a desirable procedure in certain circumstances. But, as we point out below, in a slightly different connection, this procedure could not, in practice, be applied to the salaries of all public servants. We think, however, that it might well be applied by the Provincial Legislatures to certain classes of officers, and in particular, to the higher grades of all the services. We make this proposal without prejudice to the proposals in the White Paper which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislatures at all")

The same is agreed to

New paragraphs 283, 283A, 283B, 283C, and 283D are again read The further consideration of paragraphs 283, 283A, 283B, 283C, and 283D is postponed.

Paragraphs 284 to 286 are again postponed.

Paragraph 287 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 163, line 40, to leave out ("the establishment of Provincial Autonomy") and to insert ("the date when the new provincial Governments first take office")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr Butler Page 163, line 41, to leave out ("but where") and to insert ('though it is unlikely that a revision "of the question of recruitment by the Secretary of State of officers employed "under the Federal Government will be appropriate until a later date "Where")

The same is agreed to

It is moved by Sir Samuel Hoare and Mr Butler Page 164, line 2, after ("experts,") to insert ('The Constitution Act should, in our view, make "provision for enabling the present arrangements for recruitment and control "of the Indian Civil Service and Indian Police to be varied without an "amending Act, probably procedure by Order in Council the draft of "which had been approved by both Houses of Parliament, would be most "convenient").

The same is agreed to

Paragraph 287 is again read, as amended.

The further consideration of paragraph 287 is postponed.

Paragraphs 288 to 299 are again postponed.

It is moved by the Lord Eustace Percy and Major Cadogan Page 168, after Paragraph 299 to insert the following new paragraph —

("299A Our recommendation that the Forest and Irrigation Services should in future be recruited in India does not, of course, imply that the Governments in India should abandon the recruitment of necessary personnel from England. The High Commissioner for India in London

Voglish per Voel in Forest Virigation es already accounts specialist and expert officers of various kinds in England, already accounts specialist and expect views in India, and the Government, as the agent of the competent authorities in India, and the Governments as the agent of the competent and are the agent of the continue this practice, or may, for certain purposes, in India will doubtless continue this practice, or may, for certain purposes, make use of the Civil Service Commission ")

The same is agreed to

New paragraph 299A is again read

The further consideration of paragraph 299A is postponed

Paragraphs 300 to 305 are again postponed

Paragraph 306 is again read

It is moved by Sir Samuel Hoare and Mr. Butler Page 170, line 27, to leave out (" only ") and to insert (" direct ").

The same is agreed to

The same is agreed to

It is moved by Sir Samuel Hoare and Mr. Butler Page 170, line 32, at the It is moved by our samuel House and the Secretary of State will be preserved ")

The same is agreed to

Paragraph 306 is again read, as smended The further consideration of paragraph 306 is postponed.

Paragraph 307 is again postponed.

Paragraph 308 is again read.

It is moved by the Marquess of Linhthgow Page 171, lines 8 to 23, to leave out from ("Services,") in line 8 to the end of the paragraph and to leave ut from ("Services,") in time o to the variation of the Home Department and we have noted with satisfaction the resolution of the Home Department (" and we have noted with sausiaction the representation of minorities for the "of the Government of Likus, used just a secondary of minorities for the determination and improvement of the representation of minorities in the "determination and improvement of the resolution the claims of Anglo-"Public Services in accordance with the present obtain rather more than Indians and domiciled Europeans who at present obtain rather more than "9 per cent of the Indian vacancies in the gazetted railway posts, for which "9 per cent of the indian vacanties in the sale which recruitment is made on an All-India basis will be considered when said if "recruitment is made on an Au-Linda bear cent of the railway subordinate their share falls below 9 per cent, while 8 per cent of the railway subordinate "their share falls below 9 per cent, while oper tent of the Anglo-Indians are posts filled by direct recruitment will be reserved for Anglo-Indians and domuciled Europeans We are of opinion that a reference should be included." "in the Instruments of Instructions of the Governor-General and Governors "in the instruments of instructions of the fact that the legitimate interests of minorities include their due "representation in the Public Services It would, of course, be incumbent "on the Covernor-General and Governors in the discharge of their special on the Governor-General and Governors of minorities to see that no change responsibility for the legitimate interests of minorities to see that no change "was made in the percentages prescribed in the above-mentioned resolution "without their approval")

The same is agreed to.

Paragraph 308 as again read, as amended The further consideration of paragraph 308 is postponed.

Paragraphs 309 to 317 are again postponed.

Paragraph 318 is again read.

It is moved by Sir Samuel Hoare and Mr Butler. Page 177, line 7, after "fettered") to insert ('We need hardly add that our acceptance of the proposal to abrogate the statutory proportion so far as barristers are proposal to abrogate the statutory proportion of continuing are concerned implies no doubt as to the necessity of continuing. In the interests of the maintenance of British legal traditions, to recruit a reasonable proportion of barristers or selvocates from the United Kingdom as Judges " of the High Courts")

The same is agreed to.

Paragraph 318 is again read, as amended.

The further consideration of paragraph 318 is postponed.

Paragraph 319 is again postponed.

general organisation; yet the moral of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers upon the Executive by law the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in abeyance.

Vernbility of salaries, etc., of Central and Provincial Services.

"283D. There is, however, one existing right of officers appointed by the Secretary of State, the application of which, as it stands, to civil servants in general would be impossible, namely, the right to nonvotability of salaries and pensions. There is, indeed, nothing derogatory again, to the rights and powers of the Legislature in the adoption of a special procedure similar to the Consolidated Fund Charges procedure of the British Parliament, under which certain salaries are authorised by permanent statute instead of being voted annually on estimates of supply, and this is, in fact, generally recognised to be a desirable procedure in certain circumstances. But, as we point out below, in a slightly different connection, this procedure could not, in practice, be applied to the salaries of all public servants. We think, however, that it might well be applied by the Provincial Legislatures to certain classes of officers, and, in particular, to the higher grades of all the services. We make this proposal without prejudice to the proposals in the White Paper which provide that certain heads of expenditure shall not be submitted to the vote of the Provincial Legislatures at all.")

The same is agreed to.

New paragraphs 283, 283A, 283B, 283C, and 283D are again read.

The further consideration of paragraphs 283, 283A, 283B, 283C, and 283D is postponed.

Paragraphs 284 to 286 are again postponed.

Paragraph 287 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 163, line 40, to leave out ("the establishment of Provincial Antonomy") and to insert ("the date when the new provincial Governments first take office").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 163, line 41, to leave out ("but where") and to insert ("though it is unlikely that a revision of the question of recruitment by the Secretary of State of officers employed under the Federal Government will be appropriate until a later date. "Where").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 164, line 2, after ("experts,") to insert ("The Constitution Act should, in our view, make "provision for enabling the present arrangements for recruitment and control "of the Indian Civil Service and Indian Police to be varied without an "amending Act; probably procedure by Order in Council, the draft of "which had been approved by both Houses of Parliament, would be most "convenient.").

The same is agreed to.

Paragraph 287 is again read, as amended.

The further consideration of paragraph 287 is postponed.

Paragraphs 288 to 299 are again postponed.

It is moved by the Lord Eustace Percy and Major Cadogan. Page 168,

after Paragraph 299 to insert the following new paragraph:-

("299A. Our recommendation that the Forest and Irrigation Services should in future be recruited in India does not, of course, imply that the Governments in India should abandon the recruitment of necessary personnel from England. The High Commissioner for India in London

oglish peronel in Forest Irrigation ca. already recruits specialist and expert officers of various kinds in England, as the agent of the competent authorities in India, and the Governments in India will doubtless continue this practice, or may, for certain purposes, make use of the Civil Service Commission.")

The same is agreed to.

New paragraph 299A is again read.

The further consideration of paragraph 299A is postponed.

Paragraphs 300 to 305 are again postponed.

Paragraph 306 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 170, line 27, to leave out (" only ") and to insert (" direct ").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 170, line 32, at the end to insert ("Existing rights of suit against the Secretary of State will be "preserved").

The same is agreed to.

Paragraph 306 is again read, as amended.

The further consideration of paragraph 306 is postponed.

Paragraph 307 is again postponed.

Paragraph 308 is again read.

It is moved by the Marquess of Linlithgow. Page 171, lines 8 to 23, to leave out from ("Services;") in line 8 to the end of the paragraph and, to insert ("and we have noted with satisfaction the resolution of the Home Department of the Government of India, dated July 4th, announcing new rules for the determination and improvement of the representation of minorities in the "Public Services. In accordance with this resolution the claims of Anglo-Indians and domiciled Europeans who at present obtain rather more than 9 per cent. of the Indian vacancies in the gazetted railway posts, for which recruitment is made on an All-India basis will be considered when and if their share falls below 9 per cent., while 8 per cent. of the railway subordinate posts filled by direct recruitment will be reserved for Anglo-Indians and domiciled Europeans. We are of opinion that a reference should be included in the Instruments of Instructions of the Governor-General and Governors to the fact that the legitimate interests of minorities include their due representation in the Public Services. It would, of course, be incumbent on the Governor-General and Governors in the discharge of their special responsibility for the legitimate interests of minorities to see that no change was made in the percentages prescribed in the above-mentioned resolution without their approval.")

The same is agreed to.

Paragraph 308 is again read, as amended.

The further consideration of paragraph 308 is postponed.

Paragraphs 309 to 317 are again postponed.

Paragraph 318 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, line 7, after ("fettered.") to insert ("We need hardly add that our acceptance of the "proposal to abrogate the statutory proportion so far as barristers are are concerned implies no doubt as to the necessity of continuing, in the interests of the maintenance of British legal traditions, to recruit a reasonable proportion of barristers or advocates from the United Kingdom as Judges of the High Courts.")

The same is agreed to.

Paragraph 318 is again read, as amended.

The further consideration of paragraph 318 is postponed.

Paragraph 319 is again postponed.

Paragraph 320 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, line 45, to leave out (" it is for consideration whether") and to insert (" We recommend that ").

The same is agreed to.

It is moved by Sir Samuel Houre and Mr. Butler. Page 177, line 46, to leave out ("not").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 177, line 50, at the end of the paragraph asamended, to insert ("We should add that in later "paragraphs we make recommendations which are designed to confirm and "strengthen the arrangements existing in many Provinces whereby the High "Courts are given a large measure of control over the personnel of the "Subordinate Judiciary; but we also think that provisions, settling definitely "the nature of the administrative superintendence to be exercised by the "High Courts over the Subordinate Courts in a Province, should find a place "in the new Constitution.")

The same is agreed to.

Paragraph 320 is again read, as amended.

The further consideration of paragraph 320 is postponed.

Paragraphs 321 to 349 are again postponed.

It is moved by Mr Butler and Sir Samuel Hoare. Page 191, after para-

graph 349B, to insert the following new paragraphs:-

Prior consent of Sovernor-Seneral or Sovernor should be required to egislation affecting such greats

" 349B. It is not unnatural that the holders of privileges such as we have described should he apprehensive lest the grant of responsible government, and the consequent handing over to the control of Ministers and Legislatures of all matters connected with land revenue administration should result in a failure to observe the promises which have been extended by Governments in the past to themselves or their predecessors in interest. Some of the claims to protection which have been urged upon us in this connexion would be satisfied by little less than a statutory declaration which would have the effect of maintaining unaltered and unalterable for all time, however strong the justification for its modification might prove to be in the light of changed circumstances, every promise or undertaking of the kind made by the British Government in the past. We could not contemplate so far-reaching a limitation upon the natural consequences of the change to responsible government. We recommend, however, that the Constitution Act should contain an appropriate provision requiring the prior consent of the Governor-General or the Governor, as the case may be, to any proposal, legislative or executive, which would alter or prejudice the rights of the possessor of any privilege of the kind to which we have referred.")

he Permenent ettlement

("349C. We have considered whether similar provision should be made to protect the rights of Zamindars and others who are the successors in interest of those in whose favour the Permanent Settlement of Bengal, Bihar and Orissa and parts of the United Provinces and Madras was made at the end of the 18th century. Briefly, the effect of this Settlement was to give a proprietary right in land to the class described as Zamindars, on the understanding that they collected and paid to Government the revenue assessed on that land which was fixed at rates declared at the tune to be intended to stand unaltered in perpetuity. It is apparent that the position of Zamindars under the Permanent Settlement is very different from that of the individual holders of grants or privileges of the kind we have just described; for, while the privileges of the latter might. hut for a protection such as we suggest, he swept away hy a stroke of the pen with little or no injury to any hut the holder of the vested interest himself, the alteration of the character of land revenue settlement in Bengal, for instance, would involve directly or indirectly the interests of vast numbers of the population in addition to those of the comparatively small number of Zamindars proper, and might indeed produce an

economic revolution of a most far-reaching character. Consequently, no Ministry or Legislature in Bengal could, in fact, embark upon, or at ' all events carry to a conclusion legislative proposals which would have such results unless they had behind them an overwhelming volume of public support. We do not dispute the fact that the declarations as to the permanence of the Settlement contained in the Regulations under which it was enacted could not have been departed from by the British Government so long as that Government was in effective control of land revenue. But we could not regard this fact as involving the conclusion that it must be placed beyond the legal competence of an Indian Ministry responsible to an Indian Legislature which is to be charged inter alia with the duty of regulating the land revenue system of the Province to alter the cnactments embodying the Permanent Settlement, which enactments, despite the promises of permanence they contain, are legally subject (like any other Indian enactment) to repeal or alteration. Nevertheless, we feel that the Permanent Settlement is not a matter for which, as the result of the introduction of Provincial Autonomy, His Majesty's Government can properly disclaim all responsibility. We recommend therefore that the Governor should be instructed to reserve for the signification of His Majesty's pleasure any Bill passed by the Legislature which would alter the character of the Permanent Settlement.")

The same are agreed to.

New paragraphs 349B and 349C are again read.

The further consideration of paragraphs 349B and 349C is postponed.

Paragraphs 350 to 368 are again postponed.

Paragraph 369 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 201, line 23, after ("basis.") to insert ("One point of importance does not seem to have been "made sufficiently clear by the Report of the Committee. The powers "which the Governor-General will possess of taking action in virtue of his "special responsibilities (including, of course, that relating to any matter which affects the Reserved Departments) must extend to the giving of directions to the Railway Authority. Also his right in the event of a "breakdown of the Constitution to assume to himself the powers vested in "any Federal Authority must extend to the powers vested in the Railway "Authority.")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 201, line 24, to leave out ("also").

The same is agreed to.

Paragraph 369 is again read, as amended.

The further consideration of paragraph 369 is postponed.

Paragraph 370 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 201, lines 41 to 43, — leave out from ("(2)\*.") to the end of the sub-paragraph and to insert at the end of the sub-paragraph as amended ("and the powers of the Governor-"General referred to above.")

The same is agreed to.

Paragraph 370 is again read, as amended.

The further consideration of paragraph 370 is postponed.

Paragraph 371 is again postponed.

Paragraph 372 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 207, lines 26-33, to leave out from ("Council.") in line 26 to ("be") in line 33 and to insert

("It is desirable both on grounds of economy and for other reasons that the "present centralised system of Audit and Accounts should be maintained," and it is to be hoped that the Provinces will realise the advantages of such "a course. Nevertheless it would be difficult to withhold from an autonomous "Province the power of taking over its own Audit and Accounts if it desires "to do so, and we think that the Constitution must allow a Province to take "this step subject to the following conditions. Long notice should be given "of the change" a Provincial Chief Auditor should be appointed whose position would be no less independent of the Executive than that of the "Auditor-General, a general form of accounts framed on the common basis for all the Provinces should continue to")

The same is agreed to

Paragraph 372 is again read, as amended

The further consideration of paragraph 372 is postponed

Paragraphs 373 to 379 are again postponed

Paragraph 380 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 212, lines 13 to 15, to leave out from ('us") in line 13 to ("It") in line 15, and to insert ("inap"propriate that the appointment should be made by the Governor-General
"acting solely on the advice of Federal Ministers We recommend accordingly
"that the appointment of High Commissioner should be made by the Governor
"General in his discretion after consultation with his Ministers")

The same is agreed to

Paragraph 380 is again read, as amended

The further consideration of paragraph 380 is postponed

Paragraphs 381 to 453 are again postponed

Paragraphs 1 to 42 are again read

It is moved by the Marquess of Linlithgow Pages 1 to 20 that the original paragraphs 1 to 42 be left out and that the following new paragraphs be considered in lieu of them. The new paragraphs are laid before the Committee and are read and are as follows—

# Page 3

# PART I

# INTRODUCTION

1 The conditions of the problem with the examination of which we have been entrusted are bulliantly described in the comprehensive survey which forms Volume I of the Report of the Statutory Com- 5 mission We are not aware that the accuracy of this survey has been impeached, and we are content to take it both as the starting point and the text book of our own investigation. Nor, indeed, could we do otherwise, for it would have been impossible for us in the time at our disposal to have accumulated and digested so vast a mass of fact 10 and detail We desire to place on record our deep obligation to the work of the Commission and our conviction that, if we had not had before us the fruits of their patient and exhaustive enquiries, we should scarcely have been able to enter upon, much less to complete within any measurable space of time, the task which Parliament has 15 imposed upon us Nevertheless, if the labours of the Commission have happily relieved us of the task of restating by way of introduction the conditions of the Indian problem, there are certain elements in it which must so sensibly affect the judgment which we are invited to form and the recommendations which it will be our 20 duty to make that we may be permutted briefly to refer to them

2 The sub-continent of India, I lying between the Himalayas and Cape Comorin, comprises an area of 1,570,000 square miles with a population now approaching 340 000 000. Of this area British India

1 1 c. excluding Burma. see infra, para. 45.

25 comprises about 820,000, and the Indian States 700,000, square miles, with populations of about 260,000 000 and 80,000,000 respectively It is inhabited by many races and tribes, speaking over two hundred different languages or dialects, and often as distinct from one another in origin, tradition, and manner of life, as are the 30 nations of Turope Two-thirds of its inhabitants profess Hinduism in one form or another as their religion, over 77,000,000 are followers of Islam, and the difference between the two is not only one of religion in the stricter sense, but also of race, of law, and of culture They may be said indeed to represent two distinct and 35 separate civilisations Hinduism is distinguished by the singular phenomenon of caste, which is the basis of its religious and social system and which, save in a very restricted field, remains impervious to the more liberal philosophics of the West, the religion of Islam on the other hand is based upon the conception of the equality of 40 man In addition to these two great communities, there is also to be found an infinite variety of other religions and sects, ranging from 1 s a , excluding Burma see enfes, para 45

# Page 4

the simple beliefs of Animism to the mystical speculations of the Buddhist The great majority of the people of India derive their living from the soil and practise for the most part a traditional and self-sufficing type of agriculture The gross wealth of the country is 5 very considerable, but owing to the vast number of its inhabitants the average standard of living is low and can scarcely be compared even with that of the more backward countries of Europe Literacy is rare outside urban areas, and even in these the number of literates bears hut a small proportion to the total population

3 In its political structure India is divided between British India The Indian States, The Indian are possible 600 to number States, and the Indian States The latter are nearly 600 in number They include 109 States, among them great States like Hyderabad, Mysore, Baroda, Kashmir, Gwalior and Travancore, the Rulers of which are entitled to a seat in the Chamber of Princes, 128 which 15 are represented in the Chamber by 12 of their own order elected by themselves, and 327 Estates, Jagurs, and others which are only States in the sense that then territory, often tunsisting only of a few acres does not form part of British India. The more important States within their own territories enjoy all the principal attributes 20 of sovereignty, but their external relations are in the hands of the Paramount Power The sovereignty of others is of a more restricted kind, and over others again the Paramount Power exercises in varying degrees an administrative control

4 British India consists of nine Governors' Provinces (excluding 25 Burma), together with certain other areas administered under the Government of India itself The Governors' Provinces possess a considerable measure of executive and legislative independence, but over all of them the Government of India and the Central Legislature can exercise executive and legislative authority 30 respect of certain matters, known as transferred subjects the Provincial Executives are responsible to their Legislatures, but the Governor-General in Council is independent of the Central Legislature and responsible only to the Secretary of State and through him to Parliament An official bloc forms part of both the Central and 35 Provincial Legislatures and in general acts in accordance with the wishes of the Governor-General and Provincial Governors respec-British India is administered through a number of services, some of them all-India services, and some provincial Of the former the most important is the Indian Civil Service, recruited by the 40 Secretary of State

Features of present constitution, 5. Such in the barest outline is the present constitutional structure of British India, into the details of which we shall have occasion to enter with more particularity when we deal with the specific proposals of the White Paper in their order. It will be seen that its main features are a Central Executive, responsible only to the 45 Secretary of State and through him to Parliament; Provincial Executives exercising powers over a wide field, responsible in certain

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matters hut not in others to the Provincial Legislatures; and Central and Provincial Legislatures exercising the law-making power, but with no control over the Executive in one case and with only a limited control in the other. Yet notwithstanding the measure of devolution on the Provincial anthorities which was the outcome of the Act of 1919, the Government of India is and remains in essence a unitary and centralised Government, with the Governor-General in Council as the keystone of the whole constitutional edifice; and it is through the Governor-General in Council that the Secretary of State and ultimately Parliament discharge their 10 responsibilities for the peace, order and good government of India.

The Buttch achievement.

6. British rule in India stands in no need of apologetics, but it is well to remember what its specific achievement has been. It has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any 15 part of the suh-Continent; it has harred the way against the foreign invader and has maintained tranquility at home; it has established the rule of law, and, by the creation of a just administration and an incorruptible magistracy, it has secured to every subject of His Majesty in British India the right to go in peace about his daily 20 work and to retain for his own use the fruit of his labours. It is well, also, to remember how small is the British element in the administrative and judicial services which have been the chief agents of this work. The total European population of British India to-day including some 60,000 British troops, is only 135,000. The total 25 British element in the Superior Services is about 3,150, and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police.

The Mogul Empire.

7 The success of British Rule cannot be justly estimated without reference to the condition of things which preceded it. 30 The arts of government and administration were not indeed unknown to Moguls, the and the strong hand of the Emperors who reigned between 1525 and 1707 maintained a State which ultimately emhraced the larger part of India and did not suffer hy comparison with, if it did not even surpass in splendour, the contemporary 35 monarchies of Europe. But the strength of the Mogul Empire, depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed; nor during its most magnificent period was its authority unchallenged either within or without its horders. Its 40 system of government resembled that of other Asiatic despotisms. The interests of the subject races were made subservient to the amhitions, and often to the caprices, of the monarch; for the politic toleration of Akbar found no imitator among his successors. The imperial splendour hecame the measure of the people's poverty, 45 and their sufferings are said by a French observer, long resident at the Court of Aurungzeh, to have been beyond the power of words to describe.

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8 There are pages in the history of India, hetween the collapse The post of the Mogul Empire and the final establishment of British supremacy, which even to day cannot he read without horror With but hrief intervals of relief, vast tracts were given over to the 5 internecine struggles of the princes, the guerilla warfare of petty chiefs, and the exactions of Indian and European adventurers, and to townsmen and peasants alike, the helpless victims of malice domestic foreign levy, and (the whole apparatus of) anarchy, it might have seemed that the sum of human misery was complete. It is in 10 the improvement which has taken place in Indian agriculture since the establishment of peace and security, that the Royal Commission in 1928 found a measure of the extent to which husbandry had been injured and its progress delayed by the long period of disorder and unrest that preceded the British occupation

9 Such were the conditions out of which British rule created Restoration of peace and a new and stable polity, not without the support and co operation of peace and order Peace and order were re established, the of Indians themselves relations of the Indian States with one another and with the Grown were finally determined, and the rule of law made effective through-20 out the whole of British India On this solid foundation the majestic structure of the Government of India rests, and it can be claimed with certainty that in the period which has elapsed since 1858 when the Crown assumed supremacy over all the territories of the East India Company, the intellectual and material progress of India 25 has been greater than it was ever within her power to achieve during any other period of her long and chequered history

10 We have emphasised the magnitude of the British achievement Influence of in India because it is this very achievement that has created the constitutional problem which we have been commissioned by Parliament to ideast 30 consider By transforming British India into a single unitary State, it has engendered among Indians a sense of political unity By giving that State a Government disinterested enough to play the part of an impartial arbiter, and powerful enough to control the disruptive forces generated by religious, racial and linguistic 35 divisions, it has fostered the first beginnings, at least, of a sense of nationality, transcending those divisions By establishing conditions in which the performance of the fundamental functions of government, the enforcement of law and order and the maintenance of an upright administration, have come to be too easily accepted 40 as a matter of course, it has freed the mind of an acute and ingenious race to turn to other things—and, in particular, to speculation upon the forms of government Finally, hy directing this speculation towards the object lessons of British constitutional history and hy accustoming the Indian student of government to express his 45 political ideas in the English language, it has favoured the growth of a hody of opinion inspired by two familiar British conceptions, that good government is not enough without self-government, and that the only form of self government worthy of the name is

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government hy Ministers responsible to an elected Legislature Indians, so trained and influenced, have not been slow to observe that the Government of India has-itself heen one of the most significant examples of this principle of responsibility, for its 5 accountability to Parliament, so constantly invisted on hy Englishmen of all schools of political thought, has given it a quality of stability and permanence impossible of attainment otherwise under a system of personal rule.

Reality of Indian political aspirations.

11. The Indian problem cannot be understood unless the reality of these political aspirations is frankly recognised at the outset, 10 There is ample evidence that enlightened Indian opinion has a very just appreciation of the benefits derived from the British connection, but the attachment of a people to its government is not always determined by a dispassionate calculation of material interest, still less by sentiments of mere gratitude. The subtle ferments of 15 education, the impact of the War, and the beginnings of that sense of nationality to which we have referred, have combined to create a public opinion in India which it would be a profound error for Parliament to ignore. It is true, of course, that those who entertain these aspirations constitute but a small fraction of the vast popu- 20 lation of India and that, in these circumstances, alleged manifestations of public opinion are often of doubtful value. Nevertbeless, a public opinion does exist, strong enough to affect what has been the main strength of the Government of India for many generations -its instinctive acceptance by the mass of the Indian people. To 25 the cultivators who make up nine-tenths of the population, an equitable land revenue settlement and the timely advent of the monsoon may be of more importance than any projects of constitutional reform; but, when they find that neither just administration nor good monsoons can ensure a remunerative price for 30 their produce, their lack of political ideas may make them more, rather than less, receptive of political arguments. History has repeatedly shown the unwisdom of judging the political consciousness of a people by the standard of its least instructed class, and the creation of the British Empire, as we know it to-day, has been mainly 35 due to the fact that, for the last hundred and fifty years, British policy has been guided by a more generous appreciation of the value, and a juster estimate of the influence, of what is sometimes called a politically-minded class.

The Preamble of he Act of 1919. 12. British policy has certainly been so guided in India during 40 recent years. It has conferred on the people of India, by the Act of 1919, wide powers of self-government and, during the last six or seven years, from the appointment of the Statutory Commission onwards, it has been consistently directed to working out, in free collaboration with Indians themselves, the lines of a new and more 45 permanent constitution. In particular, for the first time in the history of India representatives of her Princes and peoples have sat

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for many months in council with representatives of His Majesty's Government and of the great political Parties of the United Kingdom; and, for the first time in the bistory of Parliament, Indian delegates have taken part in the proceedings of a Joint Select Committee and have illuminated our discussions, even if circumstances forbade them to share our responsibilities. But, above all, in the Preamble to the Act of 1919, Parliament has set out, finally and definitely, the ultimate aims of British rule in India. Subsequent statements of policy have added nothing to the substance of this declaration, and we think it well to quote it here in full, as 10 settling once and for all the attitude of the British Parliament and people towards the political aspirations of which we have spoken:—

"Whereas it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of Indian administration, and for the gradual development of 15 20

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self-governing institutions, with a view to the progressive realisation of responsible government in British India as an integral part of the empire:

"And whereas progress in giving effect to this policy can only be achieved by successive stages, and it is expedient that substantial steps in this direction should now be taken:

And whereas the time and manner of each advance can be determined only by Parliament, upon whom responsibility lies for the welfare and advancement of the Indian peoples:

And whereas the action of Parliament in such matters must be guided by the co-operation received from those on whom new opportunities of service will be conferred, and by the extent to which it is found that confidence can be reposed in their sense of responsibility:

"And whereas concurrently with the gradual development of self-governing institutions in the Provinces of India it is expedient to give to those Provinces in provincial matters the largest measure of independence of the Government of India, which is compatible with the due discharge by the latter of its own responsibilities: "

13. But a recognition of Indian aspirations, while it is the constitutional necessary preface to any study of Indian constitutional problems, is an insufficient guide to their solution. Responsible government, to which those aspirations are mainly directed to-day, is not an 40 automatic device which can be manufactured to specification. It is not even a machine which will run on a motive power of its own. The student of government who assumes that British constitutional theory can be applied at will in any country, misses the fact that it could not be sucessfully applied even in Great Britain if it were 45 not modified in a hundred ways hy unwritten laws and tacit conventions. It is not unnatural that, in the words of the Statutory Commission, most of the constitutional schemes propounded by

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Indians should closely follow the British model, but the successful working of that model postulates the existence of certain conditions, which are as essential as they are difficult to define. As Lord Bryce has remarked, "the English constitution, which we admire as a 5 masterpiece of delicate equipoises and complicated mechanism, would anywhere hut in England be full of difficulties and dangers . . . It works by a body of understanding which no writer can formulate and of hahits which centuries have been needed to instil". It is superfluous to adduce examples, but two of the most important 10 may be cited; the powers of the Prime Minister and the position of the Civil Service. Of the first Mr. Gladstone said that "nowhere in the world does so great a substance cast so small a shadow " of the second Professor Lowell has pointed out that both the civil servant's "abstinence from politics" and his "permanence of 15 tenure "have been " secured by the force of public opinion hardening into tradition, and not by the sanction of law." Above all, the understanding and habits of which Lord Bryce speaks are in the main the creation of, as they have in their turn helped to promote, the growth of mutual confidence between the great parties in the 20 State, a confidence based on the fundamental beliefs, transcending the political differences of the hour, which each has come to repose in the good faith and motives of the other. Experience has shown only too clearly that a technique which the British people have thus painfully developed in the course of many generations is not to be 25 acquired by other communities in the twinkling of an eye; nor,

when acquired, is it likely to take the same form as in Great Britain, but rather to be monided in its course of development by social conditions and national aptitudes.

Difference between the letter and spirit of British constitutional doctrine.

14. Experience has shown, too, how easily the framers of written constitutions may be misled by deceptive analogies, succeeding 30 only in reproducing what they suppose to he the letter of British constitutional theory, while ignoring the spirit and the living growth of British constitutional practice. The classic instance of such misconceptions is offered by the constitution of the United States whose authors decided "to keep the legislative branch absolutely 35 distinct from the executive branch," largely because "they believed such a separation to exist in the English, which the wisest of them thought the best constitution." That error may seem absurd enough to modern students of politics, but the mere copyist of British institutions would fall into even more dangerous errors to-day if he 40 were to assume that an Act of Parliament can establish similar institutions in India merely by reproducting such provisions as are to be found in the constitutional law of the United Kingdom. It is certain, on the contrary, as we shall show, that such an Act must seck to give statutory form to many "safeguards" which are 45 essential to the proper working of parliamentary government, hut which in Great Britain have no sanction save that of established enstom; and, when this is done, it will remain true that parliamentary government in India may well develop on lines different from those of government at Westminster.

\* Bagehot: The British Constitution,

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Constitutional development should be evolutionary.

15. If, then, the long collaboration of Englishmen and Indians during recent years is to result in the enactment of a constitution which will work successfully under Indian conditions, we shall do well to discard theories and analogies and, instead, to base our scheme on the government of India as it exists to-day. That was the 5 line of approach which was adopted by the Statutory Commission and which has increasingly been followed in the deliberations of the Round Table Conferences and in our own consultations with the Indian delegates. It is also the line which Parliament has followed in the past in framing the constitutions of the self-governing 10 Dominions. If the constitutions of Canada, Australia, New Zealand and South Africa were framed on the British model, it was not because Parliament decided on theoretical grounds to reproduce that model in those countries, hut because government in those countries had heen long conducted on British principles and had 15 already grown into general conformity with British practice. If these constitutions, enacted over a period of more than forty years, differ from one another in certain points, those differences are not to he attributed to change in British constitutional theory, so much as to variations in the experience and practice of the particular 20 communities themselves. In India, too, there is already a system of government which, while possessing many special characteristics, is no less based on British principles, and is no less a living organism. Already, long before either the Morley-Minto or the Montagu-Chelmsford reforms, that government had shown a marked tendency 25 to develop on certain lines. The safest hypothesis on which we can proceed, and the one most in accordance with our constitutional history, is that the future government of India will be successful in proportion as it represents, not a new creation substituted for an old one, but the natural evolution of an existing government and the 30 natural extension of its past tendencies.

16 It is from this point of view that Parliament may well approach Autonomy as the first and basic proposal which has been submitted to us, in the proposal to found the new constitutional system in India, development 35 on the principle of Provincial Autonomy That proposal has been so fully considered and so precisely formulated by the Statutory Commission that we do not propose to discuss its details in this introductory part of our Report Ît is, however, important to observe that, far-reaching as is this constitutional change, it is 40 not a break with the past Every student of Indian problems, whatever his prepossessions, from the Joint Select Committee of 1919 to the Statutory Commission, and from the Statutory Commission onwards, has been driven in the direction of Provincial Autonomy, not by any abstract love of decentralisation, but by the 45 inexorable force of facts Moreover, the same facts had already set the Government of India moving in the same direction, long before the emergence of the constitutional problem in its present form. When that problem did emerge, a long and steady process of

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administrative devolution from the Government of India to the Provincial Governments had already profoundly affected the whole structure of Indian administration. In particular, this gradual course of devolution had produced three important results. It 5 had tended to remove Provincial administration from the immediate purview of His Majesty's Government and, by thus weakening the direct accountability of Indian administrators to Parliament, it had, perhaps, rendered inevitable the introduction, in some degree, of local responsible government. At the same time, it had tended 10 to make the Provinces the centres of the development of social services and it had also tended to transfer to the Provincial Executives the prime responsibility for the preservation of law and order From these three changes the three main features of Provincial Autonomy are directly derived

17 In the first place, the Act of 1919 introduced a large measure Aboliton of of responsible government in the Provinces, and the governments thus established have now been in operation for more than a decade Opinions may differ widely as to the success of this experiment, but we agree with the conclusion reached by the Statistory Commission, 20 that its development has now reached a stage when it has outgrown the limits imposed upon it by the Act of 1919 The present dyarchic system in the Provinces, as the Commission pointed out, though designed to develop a sense of responsibility has sometimes tended to encourage a wholly different attitude A sense of responsibility 25 is an attribute of character, not a garment to be put on or discarded at will, according to the particular social function which the wearer may be attending at the moment The Statutory Commission rightly observes that it can only be acquired by making men responsible politically for the effects of their own actions and their sense of 30 responsibility must be enormonsly weakened if the action of government is split up into watertight compartments, partitioned off by the clauses of a constitution Hence, the recommendation of the Statutory Commission, which we endorse, that the dyarchic system should be abolished, and that Provincial Ministers should be made 35 generally responsible over the whole field of Provincial government

18. Secondly, in the sphere of social administration, it is evident Responsible that a point has been reached where further progress depends upon social legislation the assumption by Indians of real responsibility for Indian social conditions Englishmen may legitimately claim that, for the greater

part of her material and intellectual progress, India has been mainly 40 indebted to British rule. But from one aspect of Indian life British rule has tended to stand aside—it bas followed a policy of neutrality and non-interference in all matters which touch the religions of India. It is not difficult to justify that policy but so closely are the habits and customs of the people bound up with their religious beliefs that 45 the effect has been to put grave obstacles in the way of social legislation by the Government of India in such matters (to name

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only two obvious instances) as child marriage and the problem of the intouchables. These obstacles can only be removed by Indian hands. We are under no illusion as to the difficulty of that task, but we are clear that under responsible government alone can it be attempted with any prospect of success.

Essence of responsible government

19 But the third aspect of Provincial Autonomy is still, as it has been from time immemorial, the most difficult and the most Among the many problems arising out of the process of devolution, the most vital one is how best to ensure the continuity of the Provincial executives in the performance of what in an earlier 10 paragraph, we referred to as the fundamental functions of government the enforcement of law and order, and the maintenance of an upright administration Because these are the fundamental function is of government and because there is no greater danger to good government than the tendency to take their performance for 15 granted, we have come, as will later appear, to the same conclusion as the Statutory Commission that Provincial Ministers must be made responsible for their performance. But it is well to remember what, according to British constitutional practice, is the nature of that It is a responsibility which no executive can share 20 responsibility with any legislature, however answerable it may be to that That has been true of legislature for the manner of its discharge the relationship of the Government of India to Parliament in the past, it must remain true of the relationship of Provincial Ministers to Provincial Legislatures in the future It is appropriate that this 25 principle of executive independence should be expressed in the Constitution by the conferment of special powers and responsibilities on the Governor as the bead of the Provincial executive raises a wider question on which a further word must be said

British conception of Parliamentary Sovernment

20 In establishing, or extending, parliamentary government in 30 the Provinces, Parliament must take into account the facts of Indian life Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors the principle of majority rule, the willingness of the minority for the time being to accept the decisions of the majority, the existence 35 of two organised political parties differing on questions of policy, but each confident (in the other's good faith and public spirit), and, finally the existence of a mobile body of political opinion, owing no permanent allegiance to either Party and therefore able, by its instinctive reaction against extravagant movements on one side or 40 the other, to keep the vessel on an even keel In India none of these factors can be said to exist to-day. There are no parties, as we understand them, and no mobile body of political opinion. In their place we are confronted with the age-old antagonism of Hindu and Muhammedan, representatives not only of two religions but of 45 two civilisations, with numerous self-contained and exclusive minorities, all a prey to anxiety for their future and profoundly

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suspicious of the majority and of one another; and with the rigid divisions of caste (itself a denial of every democratic principle). In these circumstances, communal representation must be accepted as inevitable at the present time, but it is a strange commentary on 5 some of the democratic professions to which we have listened. lay stress on these facts because in truth they are of the essence of the problem and we should be doing no good service to India by glazing them over. These difficulties must be faced, not only by Parliament, but by Indians themselves. It is impossible to predict 10 whether, or how soon, a new sense of provincial citizenship, combined with the growth of parties representing divergent economic and social interests, may prove strong enough to absorb and obliterate the religious and racial cleavages which thus dominate Indian political life. Meanwhile it must be recognised that, if free play were given 15 td the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences would be disastrous to India, and perhaps are parable. In these circumstances, the successful working of parliamentary government in the Provinces must depend, in a special degree, on the extent to which Parliament 20 can translate the customs of the British constitution into statutory safeguards."

21. That word, like other words repeatedly used in recent dis- Safeguards not cussions, has become a focus of misunderstandings both in England with responsible and India. To many Englishmen it conveys the idea of an ineffective government. 25 rearguard action, masking a position already evacuated; to many Indians it seems to imply a selfish reservation of powers inconsistent with any real measure of responsible government. Since it is too late to invent a new terminology, we must make it clear that we use the word in a more precise and quite different sense. On the one 30 hand, the safeguards we contemplate have nothing in common with those mere paper declarations which bave been sometimes inserted

in constitutional documents, and which are dependent for their validity on the goodwill or the timidity of the men or the institutions to whom the real substance of power has been transferred. They 35 represent, on the contrary (to quote a very imperfect but significant analogy) a retention of power as substantial and as fully endorsed by the laws, as that vested by the Constitution of the United States

in the President as Commander-in-Chief of the Army-but more extensive both in respect of their scope and in respect of the cir-40 cumstances in which they can be brought into play. On the other band, they are not only not inconsistent with some form of responsible government, but in the present circumstances of India it is no paradox to say that they are the necessary complement to any form of it, without which it could have little or no hope of success. It is in

45 exact proportion as Indians show themselves to be not only capable of taking and exercising responsibility but able to supply the missing factors in Indian political life of which we have spoken, that both the need for safeguards and their use will disappear. We propose to

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examine later in this Report the nature of the safeguards required, but we think it right to formulate bere what seem to us to be the . Cessential elements in the new constitutional settlement which these safeguards should be designed to supply.

22. The first is flexibility, so that opportunity may be afforded for flexibility: for the natural processes of evolution with a minimum of alteration

in the constitutional tramework itself The deplorable and paralysing effect of prescribing a fixed period for constitutional revision requires no comment in the light of events since 1919, but we are also impressed with the advantage of giving full scope for the 10 development in India of that indefinable body of understanding, of political instinct and of tradition, which Lord Bryce, in the passage which we have quoted, postulates as essential to the working of our own constitution. The success of a constitution depends, indeed, far more upon the manner and spirit in which it is worked than upon 15 It is impossible to foresee, so strange and ity formal provisions perplexing are the conditions of the problem, the exact lines which constitutional development will eventually follow, and it is, therefore, the more desirable that those upon whom responsibility will rest should bave all reasonable scope for working out their own salvation 20 hy the method of trial and error. In other words, as the Statutory Commission emphasised in their Report, the new Indian Constitution must contain within itself the seeds of growth

ior a strong executive

23 Next, there is the necessity for securing strong Executives We have little to add to what the Statutory 25 Commission have written on this point, and in our judgment they do not exaggerate when they say that nowhere in the world is there such frequent need for courageous and prompt action as in India and that nowhere is the penalty for besitation and weakness greater We do not doubt that Indian Ministers, like others before them, 30 will realise this truth, but in view of the parhamentary weaknesses which we have pointed out, the risk of divided counsels and therefore of feebleness in action is not one which can be ignored We bave no wish to underrate the legislative function, but in India the executive function is, in our judgment, of overriding importance 35 In the absence of disciplined political parties, the sense of responsibility may well be of slower growth in the Legislatures, and the threat of a dissolution can scarcely be the same potent instrument in a country where, by the operation of a system of communal representation, a newly elected Legislature will often have the same 40 complexion as the old. We touch here the core of the problem of responsible government in the new Indian Constitution, and we shall examine it in greater detail in the body of our Report Here, we content ourselves with saying that there must be (to quote again the Statutory Commission) an executive power in each Province 45 which can step in and save the situation before it is too late, and this power must be vested in the Governor

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inr an efficient administration .

24 But, further, a strong Executive is impossible and the power thus vested in the Governor would be useless, in the absence of a pure and efficient administration the backbone of all good government. The establishment of a public service, at once disinterested and incorruptible, is not the least of the benefits which British rule. The special power is not be serviced but the efficiency of a service is no less vital than its honesty. In no country perhaps does the whole fabric of government depend to a greater degree than in India upon its administration, and it is indeed literally true, as the Statutory Commission observe, that the life of 10 millions of the population depends on the existence of a thoroughly efficient administrative system. But no service can be efficient if it has cause for anxiety or discontent. It is therefore essential that those whose duty it is to work this system should be freed from anxiety as to their status and prospects under the new constitution, 15

and that new entrants should not be discouraged by any apprehension of inequitable treatment. We have every hope that such anxieties or apprehensions will prove unfounded, but they may be none the less real on that account, and, so long as they exist, it is necessary 20 that all reasonable measures should be taken to quiet them

25 Lastly, there must be an authority in India, armed with and for an im adequate powers, able to bold the scales evenly between conflicting to hold scales interests and to protect those who have neither the influence noi the ability to protect themselves Such an authority will be as interests 25 necessary in the future as experience has proved it to be in the past It must, generally speaking, be vested primarily in the Piovincial Governors, but their authority must be closely linked with, and must be focussed in, a similar authority vested in the Governor-General, as responsible to the Crown and Parliament for the peace and 30 tranquillity of India as a whole, (and for the protection of all the weak and helpless among her people) This leads us naturally to a consideration of the next point in the Indian constitutional problem the form and character of the Central Government

26. If the establishment of Provincial autonomy marks, not so Provincial 35 nuch a new departure, as the next stage in a path which India Autonomy has long been treading, it is the more necessary that, on entering resolutions this stage, we should pause to take stock of the direction in which at Centre we have been moving. We have spoken of unity as perhaps the greatest gift which British rule has conferred on India, but, in 40 transferring so many of the powers of government to the Provinces and in encouraging them to develop a vigorous and independent political life of their own, we have been running the inevitable risk of weakening or even destroying that unity Provincial Autonomy is, in fact, an inconceivable policy unless it is accom-45 panied by such an adaptation of the structure of the Central Legislature as will bind these autonomous units together In other words, the necessary consequence of Provincial Autonomy in British India is a British-India Federal Assembly In recent discussions,

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elesogory selt dive beditiesh smoosed esel ' aorismbil'" brow selt for an All-India Federation and for the establishment, in the common phrase, of 'responsibility at the Centre," both of which proposals we shall have to discuss in a moment But federation is, 5 of course, simply the method by which a number of governments, autonomous in their own sphere, are combined in a single State A Federal Legislature capable of performing this function need not necessarily control the Federal Executive through responsible Ministers chosen from among its members, indeed, as we shall 10 show later, the central government of a purely British-India Federation could not, in our opinion, be appropriately framed on this model But a Federal Legislature must be constituted on different lines from the central legislature of a unitary State The Statutory Commission realised this truth and proposed a new form 15 of legislature at the Centre specifically designed to secure the essential unity of British India As will later appear, we agree in general with the Commission's recommendations on this point, and we prefer them to the proposals contained in the White Paper

27 Of course, in thus converting a unitary State into a Federation Necessity for 20 we are taking a step for which there is no exact historical precedent Federations have commonly resulted from an agreement between tendencies independent or, at least, autonomous governments, surrendering a defined part of their sovereignty or autonomy to a new central

organism At the present moment, the British-India Provinces are not even autonomous, for they are subject to both the adminis- 25 trative and the legislative control of the Government of India, and such authority as they exercise has in the main been devolved upon them under a statutory rule-making power by the Governor General in Council We are faced, therefore with the necessity of creating autonomous units and combining them into a federation 30 by one and the same act. But it is obvious that we have no alternative To create autonomous units without any corresponding adaptation of the existing Central Legislature would be, as the Statutory Commission saw, to give full play to the powerful centrifugal forces of Provincial Autonomy without any attempt to counter- 35 act them and to ensure the continued unity of India We obviously could not take the responsibility of recommending to Parliament a course fraught with such serious risks. The actual establishment of the new central legislature may without danger, be deferred for so long as may be necessary to complete arrangements for an All- 40 India Federation, if Parliament should decide to adopt that policy, but its form must be defined in the Constitution Act itself

The Indian
States and an
All India
Federation

28 The same reasoning does not, however, apply to the further proposal laid before us, that the Constitution Act should also determine the form and conditions of an All-India Federation, 45 including the Indian States This is a separate operation, which

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may proceed simultaneously with the introduction of Provincial Autonomy and the reconstitution of the Central Legislature, but which must be carried ont by different methods and raises quite distinct issues of policy. We will leave questions of method to be considered in the body of our Report, but the issues of policy must 5 be briefly discussed here.

Difficulties of a Federation com posed of dis parate units

29 The Statutory Commission looked forward to the ultimate establishment of a Federation of Indian States and Provinces and they recommended that, until this ideal could be realised policies affecting British India and the States should be discussed between 10 the parties in a consultative but not legislative council of Greater India, consisting of representatives drawn from the States and the British India Legislature The Commission did not anticipate that the Princes would be willing to enter an All India Federation with out some preliminary experience of the joint deliberation which they 15 had suggested on matters of common concern, and no doubt the Commission saw in this procedure the means of overcoming, by a process of trial and error, the difficulties of establishing an All India Federation These difficulties are obvious and, again, they are quite distinct from the difficulties involved in the constitution of a 20 British-India Federation The main difficulties are two that the Indian States are wholly different in status and character from the Provinces of British India and that they are not prepared to federate on the same terms as it is proposed to apply to the Provinces On the first point, the Indian States, unlike the British India Provinces, 25 possess sovereignty in various degrees and they are, broadly speaking under a cystem of personal government. Their accession to a Federation cannot, therefore, take place otherwise than by the voluntary act of the Ruler of each State and, after accession, the representatives of the acceding State in the Federal Legislature will 30 be nominated by the Ruler and its subjects will continue to owe allegance to him. On the second point, the Rulers have made it clear that, while they are willing to consider federation now with the

Provinces of British India on certain terms, they could not, as 35 sovereign States, agree to the exercise by a Federal Government in relation to them of a range of powers indentical in all respects with those which that Government will exercise in relation to the Provinces on whom autonomy has yet to be conferred. We have here an obvious anomaly: a Federation composed of disparate 40 constituent units, in which the powers and authority of the Central Government will differ as hetween one constituent unit and another.

30. Against these undoubted difficulties, we have to place one Unity of India great consideration of substance, which appears to us to outweigh the disadvantages of any formal anomalies. The unity of India tional relation-45 on which we have laid so much stress is dangerously imperfect so ship between long as the Indian States have no constitutional relationship with British India. British India. It is this fact, surely, that has influenced the Rulers

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of the Indian States in their recent policy. They remain perfectly free to continue, if they so choose, in the political isolation which has characterized their history since the establishment of the British connexion. But they have, it appears, become keenly conscious of 5 the imperfections of the Indian policy as it exists to-day. A completely united Indian polity cannot, it is true, be established either now or, so tar as human foresight can extend, at any time. In most respects, the anomalies to which we have referred are the necessary incidents, not merely of the introduction of an All-India Federation 10 at this moment, but of its introduction at any time in the future. So far as we are aware, no section of opinion in this country or in British India is prepared to forego an All-India Federation as an ultimate aim of British policy. Certainly, the Statutory Commission was not prepared to do so, and it is the ideal which they 15 indicated in their report which has since won so much support among the Indian Princes. The question for decision is whether the measure of unity which can be achieved by an All-India Federation, imperfect though it may be, is likely to confer aided strength, stability, and prosperity on India as a whole—that is to say, both on 20 the States and on British India. To this question, there can, we think, be only one answer, an affirmative one; and that answer does not rest only, or even chiefly, on the kind of general considerations which naturally appeal most strongly to Englishmen. From the point of view of Englishmen, it is, indeed, evident enough that 25 Ruling Princes who have been in the past the firmest friends of British rule, but who have sometime felt their friendship tried by decisions of the Government of India running counter to what they believed to be the interests of their States and peoples, may be expected, as members of a Federation, to strengthen it precisely in 30 those directions in which Englishmen fear that it may prove weak, and to become helpful collaborators in policies which they are at presen tinclined to criticise or even to obstruct. But an even stronger, and a much more concrete, argument is to be found in the existing economic condition of India.

31. The existing arrangements under which economic policies, Economic ties vitally affecting the interests of India as a whole have to be between States formulated and carried out are being daily put to an ever-increasing India. strain, as the economic life of India develops. For instance, any imposition of internal indirect taxation in British India involves, 40 with few exceptions, the conclusion of agreements with a number of States for concurrent taxation within their frontiers, or, in default of such agreement, the establishment of some system of internal customs duties—an impossible alternative, even if it were not

precluded by the terms of the Crown's treaties with some States Worse than this, India may be said even to lack a general customs 45 system uniformly applied throughout the sub-Continent On the one hand, with certain exceptions, the States are free themselves to impose internal customs policies, which cannot but obstruct

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the flow of trade. Even at the maritime ports situated in the States, the administration of the tariffs is imperfectly co-ordinated with that of the British India ports, while the separate rights of the States in these respects are safeguarded by long-standing treaties or usage acknowledged by the Crown. On the other hand, tariff policies, in which every part of India is interested, are laid down by a Government of India and British-India legislature in which no Indian State has a voice; though the States constitute somewhat less than half the area and one-sixth of the population of India. Even where the Government of India has adequate powers to impose 10 internal indirect taxation or to control economic development, as in the cases of salt and opium, the use of those powers has caused much friction, and has often left behind it, in the States, a sense of injustice. Moreover, a common company law for India, a common banking law, a common body of legislation on copyright and trade- 15 marks, a common system of communications, are alike impossible. Conditions such as these, which have caused trouble and nneasmess in the past, are already becoming, and must in the future increasingly become, intolerable as industrial and commercial development spreads from British India to the States. On all these points the 20 Federation now contemplated would have power to adopt a common policy. That common policy would be subject, no doubt, to some reservation of special treaty rights by certain States and, in the States generally, its enforcement would, in many respects, rest with officers appointed by the State Rulers; but, even so modified, it 25 would mark a long step from incoherence towards order. In these times, when experience is daily proving the need for the close co-ordination of policies, we cannot believe that Parliament, while introducing a new measure of decentralisation in British India. would be wise to neglect the opportunity now offered to it of 30 establishing a new centre of common action for India as a whole.

The States and responsibility at the Centre.

32. An All-India Federation thus presents solid advantages from the point of view alike of His Majesty's Government, of British India and of the Indian States. But the attraction of the idea to the States clearly depends on the fulfilment of one condition: that, in 35 acceding to the Federation, they should be assured of a real voice in the determination of its policy. The Princes have, therefore, stated clearly in their declaration that they are willing now to enter an All-India Federation, but only if the Federal Government is a responsible and not an irresponsible government. This brings us to 40 the last of the main issues which have been submitted to our consideration, the issue whether, in the common phrase, there shall or shall not be any degree of "responsibility at the Centre."

Responsibility without the States not a solution of the problem. 33. It is obvious, at the outset, that the very ground on which the Princes advocate responsibility at the Centre in an All-India 45 Federation constitutes the strongest possible argument against responsibility at the Centre in a purely British India Federation; to

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a British India Centre would have to deal, as now, with matters intimately affecting the States, yet would, as now, be unable to give the States any effective voice in its deliberations. If the States

are irked by the exercise of such powers by the present Government 5 of India, their exercise by Ministers responsible to a purely British Indian electorate could hardly fail to lead to serious friction. Indeed, the position of the Governor-General in such circumstances, as the sole representative of the Crown in its treaty relations with the States and, therefore, as the sole mediator between a British Indian 10 electorate and the State Rulers, would be an almost impossible one. We agree, therefore, with the Statutory Commission in thinking that a responsible Britisb Indian Centre is not a possible solution of the constitutional problem, or would, at most, only be possible at the price of very large deductions from the scope of its responsi-15 bility.

34. But the Statutory Commission went further than this. They The statutory considered the question of responsibility at the Centre from another responsibility angle also. It is unnecessary to repeat all that they said on the at the Centre subject, but they realised, as every student of the problem must 20 realise, that responsible government at the Centre could not in any case, extend to all departments of the Central Government, and that. in any case, it would be necessary to reserve Defence and Foreign Affairs from the sphere of Ministerial responsibility. Hence any measure of responsible government at the Centre must involve a 25 system of dyarchy, and the Commission held strongly the view that a unitary Government at the Centre was essential and should be preserved at all costs. "It must be a Government," they wrote, able to bear the vast responsibilities which are cast upon it as the central executive organ of a sub-continent, presenting complicated 30 and diverse features which it has been our business to describe "; and they expressed the opinion that a plan based on dyarchy was unworkable and would, indeed, constitute no real advance in the direction of developing central responsibility. In this connection we may usefully quote one passage from the Report of the Statutory 35 Commission on the working of dyarchy in the Provinces. "The practical difficulty in the way of achieving the objective of dyarchy and of obtaining a clear demarcation of responsibility arises not so much in the inner counsels of government as in the eyes of the Legislature, the electorate and the public. Provincial Legislatures 40 were by the nature of the Constitution set the difficult task of discharging two different functions at the same time. In the one sphere, they were to exercise control over policy; in the other, while free to criticise and vote or withhold supply, they were to bave no responsibility. The inherent difficulty of keeping this 45 distinction in mind has been intensified by the circumstances under which the Councils have worked to such an extent that perbaps the most important feature of the working of dyarchy in the Provincial Councils, when looked at from the constitutional aspect, is the

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marked tendency of the Councils to regard the Government as a whole, to think of Ministers as on a footing not very different from that of Executive Councillors, to forget the extent of the opportunities of the Legislatures on the transferred side, and to magnify 5 their functions in the reserved field."

35. These are undoubtedly formidable objections, but they do not, Possible we think, exhause the question. It is impossible adequately to discuss of reposibility; the real issues involved in a decision for or against the introduction of some measure of responsibility at the Centre if the discussion is 10 confined to the Centre itself and is conducted in terms of "dyarchy. Like so many other words used in political controversy, "dyarchy"

has collected round it associations which tend to obscure issues rather than to clarify them The truth is that, in any constitution, and above all in a Federal constitution, there must be a division of responsibility at some point and at that point there will always be 15 a danger of friction. In framing a constitution, the problem is to draw the line at a point where these necessary evils will be minimised and the line will be drawn at different points according to the character and problems of the particular country concerned may be drawn at a point whole the powers which are reserved from 20 the normal operation of the constitution have, in ordinary times, little or no practical effect on the formulation and execution of policy-as, for instance, the line drawn in the British North America Act, between the powers of the Governor-General and the powers of the Governor-General in Council But in India no easy solution 25 of this kind is possible. There the line drawn must reserve to the Governor-General large powers which will have an important effect upon the policy of the government as a whole Broadly speaking three possible lines of division have been suggested to us, each of which deserves to be briefly discussed

(1) in the pro

36 One is a line drawn within the sphere of the Provincial Governments in such a way as to reserve to the Provincial Governors the responsibility for the maintenance of law and order, and to the Governor-General the responsibility for all Central subjects. This solution eliminates dyarchy at the Centre, but perpetuates it in the 35 Provinces, and we have already indicated our reasons for rejecting it. We shall discuss these reasons more fully in the body of our Report.

(2) between Centre and Provinces 37 The second line suggested to us is one coinciding with the line of division between the Provincial Governments and the Central 40 Government, the former being wholly responsible governments and the latter wholly irresponsible. This was the immediate (though not, as we shall suggest in a moment the ultimate) line of division recommended by the Statutory Commission, and it is the one which we should probably have felt constrained to recommend if we had 45 been considering a purely British Irdian Federation. But it is, we think open to very serious objections which could not be fully

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present to the mind of the Statutory Commission Though it might appear at first sight to eliminate altogether the evils of dyarchy its real effect is rather to conceal dyarchy than to eliminate it Its actual effect would be to reserve to the Governor-General the unpopular duty of taxation while allotting to responsible 5 Provincial Ministers the agreeable task of spending the money so It must be remembered that the Statutory Commission based their financial recommendations on an estimate of the future revenues of India far more sanguine than would now be accepted by any expert They therefore, felt able to recommend the estab- 10 lishment of a Provincial Fund, fed by automatic allocations from Central revenues which in turn would be automatically distributed among the Provinces In a State so happily provided with ample revenues that their division between two distinct sets of public authorities could be fixed in advance by the Constitution for all 15 time, the existence of an irresponsible government at the Centre side by side with responsible governments in the Provinces might no doubt have been expected to work reasonably well. It is, bowever, impossible for Parliament to-day to base its policy on any such assumption. The Central and Provincial Governments must 20

as we shall show when we come to our financial recommendations, be financed from year to year largely out of the same purse purse, for some time to come at least, will be at best harely adequite for the needs of both, and it must, in effect, he under the sole control In these circumstances Central policies 25 of the Central authorites of taxation and Central economic policies, on which the wealth of India and the volume of her public revenue will depend, must be of the most immediate and fundamental interest to the Government of every Province A line of division which withheld this 30 whole range of policy from the consideration of responsible Ministers could hardly fail to become the frontier across which the hitterest conflicts would be waged. and its existence would afford to Provincial Ministers a constant opportunity to disclaim responsibility for the non-fulfilment of their election promises and programmes

38 Lastly, the line can he drawn within the Central Government (3) m the Central Government Covernment itself, in such a way as to reserve the Departments of Defence and Foreign Affairs to the Governor-General, while committing all other Central subjects to the care of responsible Ministers, Subject always to the special responsibilities and powers of the Governor-General 40 outside his Reserved Departments It is, we think, a fair con

clusion from the Report of the Statutory Commission that this was the line at which they contemplated that the division of responsibility would ultimately he made They contemplated an eventual All-India Federation They helieved that the constitution which they as recommended for the Central Government would contain in itself

the seeds of growth and development. It was, no doubt, for that the seeds of grown and development, for that development, that they suggested that the protection of India's frontiers should not, at any

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rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature at all, but as a responsibility to be assumed by the Imperial Government from the difficulties of this suggestion to which we shall have to 5 return in the body of our Report, it obviously my lives a dvarchy of much the same kind as would result from a frank reservation to the Governor-General of the Department of Defence In fact, the reservation of Defence with the reservation of Poreign Affairs as muniately connected with Defence, is the line of division which 10 corresponds most nearly with the realities of the situation also the line of division which on the whole, creates the least danger of friction As the Statutory Commission pointed out in the passage we have already quoted dyarchy has not, even in the Provinces, raised any insuperable difficulties "in the mner counsels of the 15 government ', and the danger of friction in the unner counsels of the Central Government will be even smaller, for the administration of Defence and Foreign Affairs will normally, at any rate, have few contacts with other fields of Central administration under the new The one real danger of friction, and the te serious one, constitution 20 lies in the very large proportion of Central revenues which is, and must continue to be, absorbed by the Army Budget 1 n. t Budget will be removed from the control of the Central Legislature, which will he able to discuss, but not to modify or reject it, and it may be argued with much force that the existence of a standing charge of 25 this magnitude will deprive Ministers chosen from the Legislature of any real responsibility for the financial policy of the Federation.

39 It is true that this difficulty is inherent in the facts of the The Central 39 It is true that this difficulty a Ever since the facts of the The Central situation. It exists at the present day. Ever since the Act of 1919, Legislature as the Central Legislature has constantly sought to "magnify its Budget."

functions in the reserved field" of the Army Budget. The serious 30 friction thus caused would be likely to manifest itself in an even stronger form in the future in a Central Legislature such as was proposed by the Statutory Commission—a Legislature largely representative of Provincial Legislatures, yet denied all effective control over any branch of Central finance. It is also true that the 35 Statutory Commission's own scheme for a reservation of Defence to the Imperial Parliament would raise the same difficulty in an even more acute form. It is even true that the friction which now exists over Army expenditure could hardly be intensified and might be substantially mitigated by the existence of a Ministry generally 40 responsible to the Legislature for finance. Yet in spite of these weighty considerations, the danger of friction between the Governor-General and the Legislature over the Army Budget undoubtedly furnishes an additional argument against responsibility at the Centre in a purely British Indian Federation. But that is not the pro- 45 position we are now discussing. We have already made it clear that, in such a Federation, we should have felt constrained to draw our line of division at another point, notwithstanding the disadvantages of the alternatives to which we have drawn attention

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above. What we are now discussing is an All-India Federation, and in regard to the Army Budget, as in regard to the broader issues of the relations between British India and the States, the declaration of the Princes, indicating their willingness to enter an All-India Federation, has introduced a new and, in our judgment, a 5 determining factor. It is reasonable to expect that the presence in the Central Executive and Legislature of representatives of the State Rulers who have always taken so keen an interest in all matters relating to Defence will afford a guarantee that these grave matters will be weighed and considered with a full appreciation of the issues 10 at stake. It is, indeed, one of the main advantages of an All Indian Federation that it will enable Parliament to draw the line of division between responsibility and reservation at the point which, on other grounds, is most likely to provide a workable solution.

Relations between antonomous Provinces and an irresponsible Central Government.

40. Before leaving this subject we ought, perhaps, to refer 15 to one argument which has been urged upon us in favour of a wholly irresponsible Central Government, and also to one particular danger which we think Parliament should be careful to avoid. The argument to which we refer is that an irresponsible Centre would constitute a reserve of power which could be used at any moment 20 by the Governor-General to redress the situation in any Province, if responsible government in that Province should break down. This argument seems to us to rest on a misapprebension. The Governor-General in an irresponsible Centre would have no more and no less power of intervention in the Provinces, either to forestall 25 a constitutional breakdown or to restore the situation after such a breakdown, than be would possess under our recommendations. Our recommendations do, in fact, reserve to him such power through the interaction of his own and the Provincial Governors' special powers and responsibilities; but, in so far as his opportunities 30 of intervention are limited, they are limited, not by the constitution of the Central Government, but by the establishment of autonomous Provincial Governments. The danger which we think Parliament should avoid, lies in the fact, on which we have already insisted, that Ministerial responsibility is not itself a form of government 35 which can be created or prevented at will by the clauses of a statute,

so much as a state of relationships which tends to grow up in certain circumstances and under certain forms of government. It follows that a Constitution Act cannot legislate against Ministerial respon-40 sibility at the Centre, if its other provisions, or the facts of the case, are such as to encourage the development of such responsibility. It has been suggested to us that, while the Central Government should be declared by the Constitution to be an irresponsible Government, the Governor-General should be free to select any of his 45 Executive Council from among the members of the Central Legislature, and that a member of the Legislature assuming Ministerial office should not be obliged to resign his seat in the Legislature. There is much to be said for such a proposal, but it is.

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in fact, a proposal, not for the perpetuation of an irresponsible Government, but for the gradual introduction of a responsible one. It would tend (as the Statutory Commission saw) to introduce responsible government at the Centre by insensible degrees without 5 any statutory limitation of the scope of Ministerial power and responsibility. That is, indeed, broadly speaking, the way in which re-ponsible government actually grew up in Canada. It may be difficult to draw any satisfactory line of division between reserve powers and responsible government, but, under the conditions of 10 the problem that we are examining, Parliament should be careful not to draw a definite line in principle, only to blur it in practice.

41. We cannot leave this subject without asking the vital question Weak which Parliament will have to answer: whether a Central Government of India constituted as we propose would fulfil the condition 15 we have already laid down-whether it would provide a Central authority strong enough to maintain the unity of India and to protect all classes of her citizens. That question cannot be answered apart from a consideration of the strength or weakness of the Central Government as it now exists. As our enquiries have proceeded, we 20 have been increasingly impressed, not by the strength of the Central Government as at present constituted, but by its weakness. It is confronted by a Legislature which can be nothing but im Bagehot's words) "a dchating society adhering to an executive." The members of that Legislature are unrestrained by the knowledge that they 25 themselves may be required to provide an alternative government, whose opinions are uninformed by the experience of power, and who are prone to regard support of government policy as a betrayal of the national cause. It is no wonder that the criticism offered by the members of such a Legislature should have been mainly destructive; 30 yet it is abundantly clear from the political history of the last twelve years that criticism by the Assembly has constantly influenced the policy of Government. As a result, the prestige of the Central Government has been lowered and disharmony between Government and Legislature has tended to sap the efficiency of both. 35 Indeed, the main problem which, in this sphere, Parliament has now to consider is how to strengthen an already weakening Central Executive. We believe that the Central Government which we recommend will be stronger than the existing Government and we see no other way in which it could be strengthened.

42. We would close this introductory part of our Report with one Bonergency of body of central final word. At its outset we recorded our recognition of Indian aspirations and our sense of the weight to be attached to them. United Having done so, we have examined the problem from another angle, in India. concentrating our attention on the facts of Indian government and of

Indian social conditions Our study of these facts, has led us to 45 certain concrete conclusions which in the body of our Report we shall have further to elaborate and justify But, having thus reached our

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conclusions by the exercise of our judgment on the facts of the case, we may be permitted to urge their acceptance as embodying, in their broad lines, a policy on which responsible public opinion both in this country and in India may unite. We have already referred to the long process of collaboration through which successive Governments 5 in this country have sought to ascertain whether any substantial measure of agreement was possible upon the principles which should inform a new constitutional settlement in India It can scarcely have been expected by the members of the Statutory Commission, or by the participants in the Round Table Conferences, that free and 10 unfettered discussion of issues so formidable and complex would succeed in achieving so substantial a measure of common agreement as that which has emerged in the course of the last two years. No scheme for the future government of India is, of course, at present in existence which can be said to bave been agreed even unofficially 15 between representatives of the two countries. Indeed, we recognize that even moderate opinion in India has advocated and hoped for a simpler and more sweeping transfer of power, in form if not in substance, than we have felt able to recommend Moreover it must not be forgotten that there is a party in India with whom the prospect 20 of agreement of any kind must be remote But, from the discussions and personal contacts of recent years, there has emerged in each country what may fairly be described as a body of central opinion which has at least reached a juster appreciation both of the difficulties which impress and the motives which inspire a similar body of 25 opinion in the other country. It is now possible to discern much common ground where previously the dividing gulf might have seemed to be unbridgeable. Not only has this movement of opinion been observable both in this country and in British India, but the Indian States also, in making their contributions to recent discussions. 30 have at least indicated possibilities of agreement with His Majesty's Covernment and with representatives of public opinion in British India, on a new and far-reaching policy of Federation, which only a few years ago would have been thought to be outside the range of practical politics On the common ground thus marked out we 35 believe that the foundations of a firm and enduring structure can he laid

states with which Parlmneut is faced 42A Parliament is, indeed, confronted with grave problems, but it is also offered a great opportunity. There are moments in the history of nations when a way seems to be opened for the establish-40 ment between people and people of new relations more in harmony with the circumstances of the time, but when that way is beset by all the dangers inherent in any transfer of political power. Such moments are a sharp test of political sagacity, of the statesman's instinct for the time and manner of the change. If that instinct 45 fails, either from rashness or from over-caution, there is small chance of recovery. In the present issue, the dangers of rashness are obvious enough. They have been urged upon us by some to

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whom the majestic spectacle of an Indian Empire makes so powerful an appeal that every concession appears to them almost as the betrayal of a trust, but they have been urged on us also by others

whose arguments are based on the undeniable facts of the situation. 5 Those arguments are, for instance, that no self-governing nation of the British Empire has ever been faced within its borders at one and the same time by all the problems with which India has to deal: by the ever present risk of hostilities on her frontier, by the cleavage between communal interests, by innumerable differences of race and 10 speech, by a financial system largely dependent for its credit on centres outside India, and by a vast population in every stage of civilisation. Against all this, the dangers of over-caution are no less plain. No one has suggested that any retrograde step should be taken, very lew that the existing state of things should be 15 maintained unaltered. The necessity for constitutional advance, at least within the limits of the Statutory Commission's report, may be regarded as common ground. We have given our reasons for believing that the constitutional arrangements which we recommend, including a measure of responsibility at the Centre, follow almost 20 inevitably from these accepted premises. If this conclusion is rejected, two consequences at least must be faced: the propsect of an All-India Federation will disappear, perhaps for ever, but certainly for many years to come, and the co-operative efforts of the last few years, together with that body of central opinion which we 25 have described, will be irretrievably destroyed.

n Parliament's choice must to resolute and decisive.

42B. These are grave issues, and if we do not enlarge further upon the consequences of a failure to make the right use of the present opportunity, it is because we believe that the choice that is now to be made must be made without fear and without favour, on a just 30 estimate of the facts of a situation and the feelings of a people, on a cool calculation of the risks involved in any of the alternative courses open to us, but without hesitations born of timidity. We have recommended the course which appears to us to be the right one, but whatever course Parliament may eventually choose, it is 35 above all necessary that its choice should be resolute and decisive. By general admission, the time has come for Parliament to share its power with those whom for generations it has sought to train in the arts of government; and, whatever may be the measure of the power thus to be transferred, we are confident that Parliament, in 40 consonance with its own dignity and with the traditions of the British people, will make the transfer generously and in no grudging

. The came is agreed to.

spirit.

New paragraphs 1 to 42s are again read.

The further consideration of paragraphs 1 to 42B is postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past I'wo o'clock.

# Die Mercurii 25° Julii 1934

### Present:

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL PEEL VISCOUNT HALLFAX. LORD MIDDLETON. LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST, LORD RANKEILLOUR. LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MAIOR CADOGAN. SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADDOCK. MR. DAVIDSON. Mr. Foor. SIR SAMUEL HOARE. MR. MORGAN JONES. SIR JOSEPH NALL. LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraphs 43 to 389 are again postponed.

Paragraph 390 is again read.

It is moved by Sir Reginald Craddock. Page 217, line 8, to leave out (" and which ").

The same is agreed to.

It is moved by Sir Reginald Craddock. Page 217, line 9, to leave out from ("capital") to the end of the sentence and to insert; ("These two "sub-Provinces, Arakan and Tenasserim, constituted the nucleus of British "territorial dominion in Burma and were administered as distant appanages " of Bengal.")

The same is agreed to.

Paragraph 390 is again read, as amended.

The further consideration of paragraph 390 is postponed,

Paragraph 391 is again postponed.

· Paragraph 392 is again read.

It is moved by Sir Reginald Craddock. Page 218, line 6, after (" of ") to insert (" Arakan and ") and to leave out (" and Martaban ").

The same are agreed to.

It is moved by Sir Reginald Craddock. Page 218, line 7, after (" Province") to insert: ("known as Lower Burma or British Burma"

The same is agreed to.

Paragraph 392 is again read, as amended.

The further consideration of paragraph 392 is postponed.

Paragraph 393 is again postponed.

Paragraph 394 is again read.

It is moved by Sir Reginald Craddock. Page 218, line 46, to page 219, line I, to leave out from ("demanded") in line 46, page 218, to ("and") in line 1, page 219, and to insert ("complete Home Rule").

The same is agreed to.

Paragraph 394 is again read, as amended.

The further consideration of paragraph 394 is postponed.

Paragraphs 395 and 396 are again postponed.

All amendments are to the Draft Report (vide infra paras. 1-42B, pp. 470-491; and vide supra paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part I).

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 397 is again read.

It is moved by Sir Reginald Craddock. Page 220, line 47, after (" entails ") . to insert (", and the fact that the indigenous peoples of Burma belong to the "Mongolian group of races and are distinct from the Indian races in origins, "in languages and by temperament and traditions").

The same is agreed to.

Paragraph 397 is again read, as amended. The further consideration of paragraph 397 is postponed.

Paragraph 398 is again postponed.

Paragraph 399.

It is moved by Sir Reginald Craddock. Page 222, line 18, to leave out "Burma was fully annexed to India") and to insert (" the whole of Burma became part of the Indian Empire"). The same is agreed to.

Paragraph 399 is again read, as amended. The further consideration of paragraph 399 is postponed.

Paragraphs 400 to 404 are again postponed.

Paragraph 405 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 225, lines 27 to 30, to leave out from ("opinion,") in line 27, to ("should") in line 30, and to insert (" the two Constitution Acts should state the minimum period for "which the Agreement is to be binding on India and Burma and also make it "clear that after the termination of that period it should be open to, but not "incumbent on, either side to give notice of its intention to determine it; "the period of notice, which might conveniently perhaps be twelve months, "should also be stated in the Act. We do not ourselves make any more precise recommendation as to what the minimum period of the Agreement's "validity should be than that it should not be less than one year, for wo "think it would be far best that the actual period should, like the content of the Agreement, be fixed by mutual accommodation between India and Burma in the course of the negotiations. If, however, they should fail to reach agreement on this point we think that His Majesty's Government, "who would no doubt be apprised of the differing views held, should insert "a specific period in the Bills laid before Parliament. We think also that the 'agreement''). The same is agreed to.

Paragraph 405 is again read, as amended. The further consideration of paragraph 405 is postponed.

Paragraph 406 is again postponed.

It is moved by Sir Samuel Hoard and Mr. Butler. Page 225. After paragraph 406 to insert the following new paragraph:-

(" 406A. There is a cognate matter which it is important should be Relief from settled before separation comes into effect, namely, the means of affording income tax, relief to persons, firms and companies who might otherwise be exposed by the act of separation to a double liability to income-tax. We regard it as important that such relief should be afforded, and we understand that the question of the means best adapted to achieve the purpose is now under examination. Pending the result of this examination we make no specific recommendation as to the statutory provision required, but we think that this matter should be dealt with on similar lines to those which we have recommended in the case of the Trade Agreement.")

The same is agreed to.

New paragraph 406A is again read, as amended. The further consideration of paragraph 406A is postponed.

Paragraphs 407 to 414 are again postponed.

Paragraph 415 is again read.

It is moved by Sir Reginald Craddock Page 229, lines 27 to 41, to leave out. iror: (" accepted ") in line 27, to the end of the paragraph, and to insert -(" Prima face the same considerations would apply in Burma as would apply if she were not separated from India but continued to constitute a Province of British India But it is necessary to take into account the factors which differentiate conditions in Burma from those of Provinces in India

The further consideration of the said amendment is postponed

It is moved by Sir Reginald Craddock Page 229, after paragraph 415, to insert the following new paragraph -

415A The communal question so far as it arises from strong religious antagonisms is comparatively unimportant in Burma, though Hindu Moslem conflicts are not unknown even there But its place is taken by lacial livalries between Irdian and Burman, Burman and Chinese, and sometimes between Karen and Burman, which upon occasions have flared up into acts of violence or persecution. Again, serious crime—especially crimes of violence—appears to be more rife in Burma than in India. In proportion to population the percentage of murders, dacoities and cattle thefts exceeds (and often greatly exceeds) the percertage in almost every other Province in British India. It has been frequently necessary to adopt special measures to deal with decoities accompanied by murder, and waves of crime are apt to develop into rebellions and guerilla warfare, as was shown by the recent grave rebellion and other similar revolts in the history of the country. Moreover, peace has frequently been disturbed by conspiracies, sometimes originating across the border, led by exile pretenders claiming royal oescent, or by persons supposed to be remearnated national heroes who play on the superstitions of the ignorant people All these movements, if not properly handled from the outset, may throw a countryside into disorder

and panic and cause loss of life and property

"The recent tendency of the 'Yellow Robe' to encourage and stir up political animosities is a disquieting feature of recent years, for the influence of the monks is very great, especially over the women, and is far more extensive than is the case in India. It has also to be remembered that the agency for dealing effectively with subversive movements or incipient rebellion is almost entirely Indian and that there is a large Indian contingent in the civil police of Rangoon, in which city (population 400,000) the Burmese are outnumbered by Indians, constituting only 30 per cent of the population of Rangoon as against 53 per cent. Indian, while Chinese, who have largely increased in numbers, amount to over 30,000, or 8 per cent of the population Terrorism, as an indigenous movement, is practically unknown so far as Burmans are concerned, though emissanes of the Terrorist Movement are not wanting among the Bengalis in Rangoon, some among whom were believed to be privy to the late rebellion. We have also to consider the safety of the Indian population in the richer tracts of the Province, the Delta and Coastal Districts These men have in their hands a predomulant share of the trade, commerce and money-lending of these areas, and in the event of any anti-Indian movement among their Burman neighbours taking violent form, will be in a very precarious position. Taking all these special features into consideration, we feel that if the department of Law and Order be transferred to the charge of a Minister, it will be necessary for the Governor to be invested with the same power of resuming control as we have recommended in the case of Indian Provinces wherever Bengal terrorism has penetrated ")

The further consideration of the said amendment is postponed

Paragraphs 416 to 418 are again postponed

Paragraph 419 is again read.

It is moved by Sir Samuel Hoare and Mr Butler Page 231, lines 22 to 24, to leave out from ("Provinces") in line 22 to the end of the sentence, and to insert ("We have already recorded our views in relation to the first of them "and subject to the governing factor that in the unitary government of "Burma the special and discretionary responsibilities and special powers of "the Governor-General and of the provincial Governors in India, respectively, "will be combined in the hands of the Governor, we are of opinion that the "recommendations which we have made elsewhere! in regard to these matters, and in legard to arrangements for apprising the Governor of any question "affecting them in India should apply with some necessary adjustments of form, in the case of Burma.")

The same is agreed to.

Paragraph 419 is again read, as amended.

The further consideration of paragraph 419 is postponed.

Paragraphs 420 to 425 are again postponed.

Paragraph 426 is again read.

It is moved by the Lord Rankeillour. Page 234, line 29, to leave out {"unless it is sooner dissorted ")

The amendment, by leave f the Committee, is withdrawn.

Paragraph 426 is again read.

The further consideration of paragraph 426 is postponed.

Paragraphs 427 to 437 are again postponed.

Paragraph 438 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, line 37, after the amendment inserted after ("objection") at the first stage to insert: ("As regards the request to return the rights and privileges of that Service, "we note that the Burma White Paper proposes, rightly in our opinion, "that officers serving in Burma who were appointed by the Secretary of State "shall be protected in existing rights and that the Secretary of State shall "be empowered to award such compensation as he may consider just and equitable for the loss of any of them.")

The same is agreed to.

Paragraph 438 is again read, as amended.

The further consideration of paragraph 438 is postponed.

It is moved by Sir Reginald Craddock. Page 241, after paragraph 438, to insert the following new paragraph:—

("438a There is, however, one point of importance to which we must refer The Statutory Commission while considering that the new Constitution of a separated Burma would, like that of India, be a stage on the journey to more complete self-government, added that it would not be assumed that detailed provisions would not vary:

'In particular the provisions of the Lee Report, which fixed a date by which a certain proportion of British to Indians in the Services should be reached, was based on a general average for the whole of India—greater in some Provinces, less in others. These proportions must not, therefore, be taken as automatically applicable to a separated Burma. Recruitment on a basis corresponding to the basis of All-India Services will be required and it will be or the greatest importance to preserve and build up the traditions of these Services. The pace of Burmanisation must be decided on its ments. The ultimate advancement of Burma will depend more than anything else on the efficiency of a suitable administration during the years now coming, and premature efforts on its part to dispense with help from Britain would only lead to disaster.'

Having regard to these remarks of the Statutory Commission bearing on recruitment for the Security Services, it is not possible to ignore the fact that no Burman succeeded in entering the Indian Civil Service before 1922, when two Burmans were nominated, whereas Indians

<sup>&</sup>lt;sup>1</sup> Supra, paras. 75-77, 88-96 (so far as applicable) 187 and 168.

had won places in an open competition for that Service over a period extending back 65 years. The ratio of Burmanisation must depend upon qualified candidates being available in sufficient numbers, otherwise the standard of the Service cannot but fall and the higher salaries attaching to it be wasted to the great discontent of experienced Burmase officers in the Provincial Civil Service who have been performing their duties satisfactorily on much lower pay. The table in the footnote below compares the composition of the Burma Commission on the Executive side in 1924 and 1934 respectively. The British Members of that Commission have in 10 years interval fallen from 138 to 96, while the Burmans in the I C S. have risen from 4 to 20. Of these only 4 have reached 8 years of Service, 6 were appointed in the current year, and the remaining 10 have from 3-5 years service only

The Burma Commission (Executive Side)

	British Officers			Burmans in the ICS	Total
	Military Officers	ICS	Total	105	,,
1924 1934	21 9	117 87	133 96	20	142 116

The most senior Burman in the ICS has 12 years service. Only 1 out of the 20 entered by open competition in London. The decline in the strength of the Burma Commission proper has been partly compensated for by promotion, permanent and officiating of Burman officers drawn from the Provincial Service. Having regard to the caution of the Statutory Commission and the facts which we have just described, it seems to us advisable that the Secretary of State might conveniently discuss this question further with the Covernment of Burma before the Constitution Act comes into force and that the projected enquiry which is proposed in paragraph 287 in the case of the All-India Services in India should not be extended to Burma until the appropriate ratio between British and Burmans in the ICS and Police has been further investigated.)

The amendment, by leave of the Committee, is withdrawn

Paragraphs 439 to 442 are again postponed

It is moved by Sir Reginald Craddock Page 242, after paragraph 442, to insert the following new paragraph —

("442A This is a convenient point at which we may refer to questions connected with the domiciled community, including Anglo-Indians and Anglo-Burmans in respect both to education and to their fitness for appointments in the various Services—the latter depending very greatly on the efficiency of the former

Owing to the fact that the progress of English education among the Burmese was far slower than in India, Anglo-Indians are still to be found in some of the higher posts in the Provincial and Subordinate Services in Burma, in the Teaching Profession, in the higher clerical posts, as well as in the Central Services still under control by the Government of India. Over the whole Province the recent census shows that there are altogether 19,200 Anglo-Indians, of whom just over half are concentrated in Rangoon. Hitherto their chief competitors have been Indians imported from India, and not Burmese at all, and it is obvious that any rapid

drop in the number of Anglo-Indians employed in the Land Records and Excise Departments, as well as in the Present Central Services which will be . transferred to the control of the Government of Burma, would inflict an unmerited blow on this community, for they would not merely lose these posts but also the means which have enabled them to pay for the education of their children. It is important, therefore, for this, among other reasons, that the standard of European education should be maintained. In India, few Indian parents wish to send their children to Christian schools for European and Anglo-Indian children but for some years past Burmese parents have shown an increasing liking for schools of this kind, and the percentage of children of other races who have been admitted into these schools has increased considerably in the last ten The teachers in these schools have to be paid higher salaries, and they fulfil the natural wish of European and Anglo-Indian parents that their children should be brought up in a Christian school and taught by teachers whose mother-tongue is English. If, therefore, pupils of other races and creeds should, under the new Constitution, be further increased, the whole character of these Institutions will be practically destroyed. It was represented to us that the Anglo-Indians felt that the tests imposed upon Anglo-Indian children in the matter of proficiency in Burmese tended to be too severe upon children whose mother-tongue was English, and that they were thereby prejudiced in the matter of becoming qualified for employment in the public service. These are matters in which it is not possible for us to enter upon any stail, but we consider that both the education and the employment of Ang. -Indians should engage the special attention of the Governor in order that this deserving class should not be subjected to any handicaps either in the quality of their education or their eligibility for posts in the Government service. It would further be necessary for regulations to be made laying down the percentage of appointments in railways, posts and telegraphs, and the customs' service, which could fittingly be reserved for members of the Anglo-Indian community.")

The amendment, by leave of the Committee, is withdrawn,

Paragraphs 443 to 453 are again postponed.

Ordered, that the Committee be adjourned to Monday next at half-past Four o'clock.

## Die Lunge 80° Julii 1934

### Present :

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING EARL OF DERBY. EARL PEEL. VISCOUNT HALIFAX LORD MIDDLETON LORD KER (M. LOTHIAN). LORD HARDINGE OF PENSHURST. LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN. SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. Foot

SIR SAMUEL HOARE MR. MORGAN JONES SIR JOSEPH NALL. LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjonrament is read.

The Proceedings of Friday last are read.

Paragraph 1 is again postponed.

Paragraph 2 is again read.

It is moved by the Lord Ker (M. Lothian). Page 3, lines 27 and 28, to leave out from (" and ") in line 27 to (" dialects") in line 28 and to insert (" peoples, speaking about 12 main languages and over two hundred minor ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linhthgow. Page 3, lines 27 and 28, to leave out ("over two hundred different languages or dialects") and to insert (" a dozen main languages and over two hundred minor dialects").

The same is agreed to.

It is moved by the Earl Peel Page 3, line 33, to leave out (" of race"). The same is agreed to.

It is moved by the Lord Ker (M. Lothian) and the Marquess of Linlithgow. Page 3, line 35, to leave out ("singular").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian) and the Marquess of Einlithgow. Page 4, line 5, after (" vast ") to insert (" and still rapidly growing ").

The same is agreed to.

Paragraph 2 is again read, as amended.

The further consideration of paragraph 2 is postponed.

Paragraph 3 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 4, line 14, to leave out (" 128") and to insert (" 126").

The same is agreed to.

All amendments are to the Draft Report (vide supra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published (Vol. I, Part I).

A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

It is moved by Sir John Wardlaw-Milne. Page 4, line 17, to leave out (" often ") and to insert (" sometimes ").

The same is agreed to.

Paragraph 3 is again read, as amended.

The further consideration of paragraph 3 is postponed.

Paragraph 4 is again postponed.

Paragraph 5 is again read.

It is moved by the Earl Peel. Page 5, line 3, after ("no") to insert (" constitutional ").

The same is agreed to.

Paragraph 5 is again read, as amended.

The further consideration of paragraph 5 is postponed.

Paragraph 6 is again read.

It is moved by the Earl Winterton. Page 5, lines 12 and 13, leave out from the beginning of the paragraph to ("It") in line 13 and to insert—("The "record of the British rule in India is well-known. Though we claim for it "neither infallibility nor perfection, since, like all systems of Government, "it has, at times, fallen into error, it is well to remember the greatness of its "achievement.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 5, line 19, to leave out ("incorruptible magistracy") and to insert ("upright judiciary")?

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 5, lines 21 to 24, to leave out from ("labours") in line 21 to "The ") in line 24, and to insert ("The ultimate agency in achieving these results has been the power wielded by Parliament. The British element in "the administrative and judicial services has always been numerically " small ".)

The same is agreed to.

Paragraph 6 is again read, as amended.

The further consideration of paragraph 6 is postponed.

Paragraph 7 is again read.

It is moved by the Lord Ker (M Lothian) and Mr. Foot. Page 5, line 32, to leave out (" Moguls ") and to insert (" earlier Hindu kings like Asoka " and after the third (" the ") to insert (" Mogul ").

The same are agreed to.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Line 44, to leave out from ("Akbar") to the end of the sentence and to insert (" and hisimmediate successors disappeared with Aurungzeb.")

The same is agreed to.

Paragraph 7 is again read, as amended.

The further consideration of paragraph 7 is postponed.

Paragraph 8 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 6, line 8, to leave out (" the whole apparatus of ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 6, line 14, to leave out ("British occupation").
"under the British Crown"). British occupation ") and to insert (" establishment of the unity of India

Paragraph 8 is again read, as amended the further consideration of paragraph 8 is postponed

Paragraph 9 is again read

It is moved by the Lord Ker (V. Lothian) and Vir Foot Page 6, hine 15, after ( rule') to insert ( gradually ")

The same is agreed to

It is moved by the Earl Winterton Page 6, lines 15 to 17, to leave out from ( rule ) in line 15 to the end of the sentence and to insert ( and with the aid and co operation of many Indians, created a new and stable polity ')

The same is agreed to

It is moved by Sir Samuel Hoare and Vir Butler Page 6, line 18, to leave out ( with one another and )

The same is agreed to

to leave out ( intellectual ) and to insert ( 'educational )

The same is agreed to

I aragraph 9 is again read, as amended I he further consideration of paragraph is postponed

Paragraphs 10 to 42B are again read

It is moved by the Marquess of Salisbury, the Lord Middleton, the Lord Rankeillour. Sir Reginald Craddock, and Sir Joseph Nall Pages 6 to 20g, to leave out paragraphs 10 to 42B inclusive, and to insert the following new paragraphs—

10 We have emphasized the magnitude of the British achievement in India because it is this very achievement that has created the problem which we have been commissioned by Parliament to consider Opinions differ profoundly as to the proper solution of this problem and as to the extent to which self-government should go and the conditions under which it should be approached We would emphasise the necessity of a gradual and cautious advance. We do not underrate the aspirations represented by the members of the Indian Delegation who assisted us, but beyond a vague spirit of unrest, little more than a stiffening of Asiatic opinion against the hitherto unchallenged domination of the West, we doubt whether these Constitutional desires exist in India except amongst a small politically-minded intelligentsia Amongst these it is natural enough, being the result of a European education which this Country has given them. But education is not the same thing as experience and even this small element of the Indian population has never had the opportunity of acquiring the political experience which It was bearing in mind these circumstances is our own inheritance that Parliament passed the Act of 1919 According to the language of the preamble of that Act the advance to self-government, the ultimate objective, was to be tentative, and by Section 41 it was indeed provided that according as experience might teach us, that advance might proceed further, or be checked, or even retraced, in the future Perhaps the greatest danger in the way of this spirit of caution, as all students of this problem would we think agree, lies in relying upon a false analogy with Parliamentary evolution in this Country—It has even been suggested that because the form of the particular government which has been successful in conferring upon India the great benefits above described that is the government of England—is essentially a responsible govern ment this constitutes an argument for trusting the future of India to an Iudian responsible government. This argument is wholly misleading, because the true source of these benefits was the experience and inherited

capacity of the British people Neither is it profitable to suggest that if India be denied full self-government the numstructed mass of her people, as in certain Western nations, will attribute any lack of prosperity that the future may have in store to this denial It would be at least as true to say that when after the granting of these reforms the Indian cultivators note the agitation which will ensue and mark the change which in greater or less degree is too likely to follow, from justice to injustice, from economy to extravagance, from efficiency to inefficiency, they may question the wisdom which has produced these results. These analogies are most unsafe. The success of our own form of government depends in the first place upon the British temperament As Lord Bryce remarked, "the English constitution which we admire as a masterpiece of delicate equipoises and complicated mechanism would anywhere but in England be full of difficulties and dangers It works by a body of understanding which no writer can formulate and on habits which centuries have been needed to instill " It could not work without this understanding, this established custom of our people, or as we should prefer to call it in this coancetion, their general consent Safeguards are no doubt necessary in India but they are in startling contrast to this general consent, and there is in reality no analogy between a government which depends upon the use of safeguards and a government which depends upon established custom. It follows as the Statutory Commission has indicated, that our model, the Westminster model, for Indian reform should be avoided. And in particular we should be on our guard against a feature in the Westminster model, specially noted in their Report as inappropriate for India, --- we mean the feature in our system "that the government is hable to be brought to an end at any moment by the vote of the legislature' For how can a Governor-General in the discharge of his reserved functions and his special responsibilities resist such a form of pressure by the legislature? There is another feature which removes the case of India poles as under from the British model We work with political parties no such things in India These parties in Great Britain are organised, but between them there is a large unorganised mobile body of political opinion owing no allegiance to any party and therefore able by its instinctive reaction against extravagant movements on one side or the other to keep the vessel on an even keel. Not only is this mobile body absent in India but under the scheme before the Committee there would almost be an impossibility that it should be formed. With the method of indirect election, subject to the compelling force of the Communal Award, the electors will be actually prevented from being mobile and from voting for anybody outside their own creed

'Il But let us turn from these contrasts with British experience to the teaching which even Indian experience can give us. The present dyarchic system in the Provinces, as the Commission has pointed out, though designed to develop a sense of responsibility has tended to encourage a wholly different attitude. It has been universally condemned and as will be seen in the body of our Report we are recommending its abolition in the new Provincial Constitutions. It is therefore a grave question whether we should re-create it in the Centre, involved as it must be in the reservation of the defence services to the Vicerov and outside the authority of a responsible Ministry. As the Statutory Commission pointed out it is not in the counsels of government that the practical difficulty in the way of achieving the objective of dyarchy and a clear demarcation of responsibility arise. It is the legislature which

tends to be demoralised by dyarchy

"As long as dyarchy continues, it is mevitable that the elected members of the legislature should tend to show an exaggerated hostility to the work of the reserved half of the Government, which they may

criticise hut cannot control. If money is wanted for "nation-huilding" services, the temptation to blame reserved departments for spending too much is far more attractive than the alternative course of imposing new taxes. And if new taxes were imposed where is the guarantee that the proceeds would be devoted to the purpose intended? A legislature with Ministers responsible to it for certain departments of government naturally looks across the boundary to the forhidden territory reserved for a different system of administration, and loses much of the value of its control over ministerial policy by indulging in bouts of criticism of departments which are not in the hands of Ministers" (Pages 32 and 33 of Vol. II of the Stat Comn. Report.)

"12 These things must be weighed before we form our conclusions in this Report. Again, in framing our proposals we must bear in mind anomalies which face us in the problem of an All-India federation. The Indian States are wholly different in status and character from the Provinces of British India and they are not prepared to federate on the same terms as it is proposed to apply to the Provinces. The subjects of the Prince will continue to owe allegiance to him and only a limited obedience to the federal responsible government. Moreover, the representatives of the States would have to be empowered to vote upon interests which are purely. British-Indian whereas the British-India representatives can have no corresponding power as to the States. These anomalies are not formal. In India they lie at the root of the federal problem. Unequal powers are the breeding-ground of temptation to intrigue, since units which have got powers which others do not possess may be induced to exercise them or not to exercise them for a quid proquo which could not be justified on ment.

"13 Federal finance presents more than one example of anomalies which in a federal scheme must be encountered. In the first place Income Tax legislation would be an instance of the unequal powers to which we have just referred It is to be paid by British India, but, so far as powers go, can be voted upon by the representatives of the States who will not pay it In the second place in the contemplated scheme Income Tax is to be shared between the Federation and the Provinces The division between them is to be according to a numerical proportion, evidently a most unsatisfactory method, because it would not follow that when the Federation require an increase of revenue the Provinces will also require one, or conversely when the Federation could afford a reduction that the Provinces could reasonably follow its example But after prolonged consideration we have been unable to find any better plan in a federal scheme Of course it is true that as Indian finance stands at present this division ought to be suspended, since the federation will require all the revenue from Income Tax it can get But though it ought to be suspended there is some doubt whether this suspension will in fact take place especially if as is singgested the States were not to use their power to vote upon British-India issues Upon the position of the Income Tax the method of electing the British-India representatives in the central legislature must have a remarkable reaction We have been ohliged to discard the method of direct election which is proposed in the White Paper We found it to be physically impossible and have been obliged to fall back upon indirect election And the form we have found it necessary to entertain is that the British-India representatives shall be the nominees of the majorities of the Provincial Assemblies, that is to say, they will practically act under a mandate from these majorities. It follows that in the Central Legislature the British-India representatives in deciding upon the Income Tax will look upon it with Provincial eyes and will determine the issues largely, if not mainly, according to Provincial interests. This danger was foreseen when we adopted indirect election: though we had no other choice. But the inter-action of indirect election upon Income Tax legislation involves another anomaly which predicates the most cautious advance in federal self-government.

"14. These are not the only reasons why we repeat that the advance of self-government should be, as the Act of 1919 intended it to be, gradual and cautious. The communal difficulty stands in the middle of the path. We are confronted with the age-old antagonism of Hindu and Mohammedan, representatives not only of two religions but of two civilisations, with numerous self-contained and exclusive minorities all a prey to anxiety for their future and profoundly suspicious of the majority and of one another, and with the rigid divisions of caste, itself a denial of every democratic principle. In these circumstances though communal representation must be accepted as inevitable at the present time, it is a strange commentary on some of the democratic provisions to which we have listened. We lay stress on these facts because in truth they are in the essence of the problem and we should be doing no good service to India by glazing them over. In the face of these difficulties those upon whom responsibility will rest, whether they he in India or this Country, should have all reasonable scope for overcoming them by the method of trial and error But for this purpose it is necessary to constitute adequate machinery for redress. For this reason we are recommending the provision of full authority in the Governor-General to give directions in all matters over which the Provincial Governors have a discretion. Undoubtedly he may be hampered in correcting Provincial mistakes by Ministers who are supported by memhers representing Provincial Assemblies. That is inevitable with a Central responsible government and with indirect election of the legislature. But we think it very important to secure what power we can for the Governor-General, though we recognize that the burden thrown upon him by our proposals requires an almost unexampled degree of ability and versatility both of himself and his personal staff. Nevertheless, we are not sure that it might not be requisite to add still further to the load, and it may well be that in the new Constitution he ought to be furnished with over-riding ordinance powers in the case of the Provinces, as we are proposing that he should possess in the case of the Centre, to use when necessity requires. These ordinance powers, in the case of the Centre if not in the Provinces. are certainly necessary. We agree, as has been contended, that under the present constitution the central government is unduly weak. The ordinance power would we hope serve to protect the future central power from any loss of prestige such as it is said with some truth that the present government of India may be incurring. But what is much more to be feared in any future constitution than the loss of prestige by the Government is the loss of prestige by the Governor-General. We are not without anxiety that with a responsible government he would be exposed naked to the pressure not only of the legislature but even of his own Ministers where, he differs from them, in the whole field of the reserved services, in his relations with the Princes, and in the discharge of his special responsibilities when he feels called upon to use them.

"15. It is necessary to add that in considering the reforms which we are about to recommend to Parliament we should find a British-India Federation to present even greater difficulties than a federation which embraces the States as well. Indeed, we believe that the feeling amongst our colleagues against a purely British-India Federal Government is overwhelming, and for these reasons. There is no question that the States have some grounds for complaining of the want of attention paid to their views by the Government of India in the past. A British-India Federal Centre would have to deal, as now, with matters intimately

affecting the States without giving them any effective voice in its deliberations. If the States have reason to complain of the treatment of their interests by the present Government of India, the treatment of these by Ministers responsible to a purely British India electorate could hardly fail to lead to serious friction. Yet the very fact of this inevitable conclusion reacts upon the whole problem. We are bound to contemplate the position that would ensure if the full conditions of an All-India Federal Constitution should have been enacted and thereupon the Princes, or a sufficient number of them, decline to accede. It is evident that in these circumstances the demand of the politically-minded classes in British India to enter into the federation which the Princes had declined, but which in all its detail would be already on the Statute book, would be very difficult to resist. This reflection adds a final reason for cautious advance, in prescribing, as we now proceed to do, the extent of self-government in India which it would be right to recommend.")

Objected to

On Question --

Contents (5).

Marquess of Salisbury
Lord Middleton
Lord Rankeillour
Sir Reginald Craddock
Sir Joseph Nali

Not Contents (19) Lord Archbishop of Canterbury. Marquess of Zetland. Marquess of Linhthgow. Marquess of Reading. Earl of Derby Earl Peel Viscount Halifax Lord Ker (M Lothian) Lord Hardinge of Penshurst Lord Snell Lord Hutchison of Montrose Mr Butler Major Cadogan Mr Davidson Mr Foot Sir Samuel Hoare Lord Eustace Percy Sir John Wardlaw-Milne. Parl Winterton

The said amendment is disagreed to

Paragraph 10 is again read

It is moved by the Earl Winterton Page 6 lines 40 to 42, to leave out from ("has") in line 40 to the end of the sentence and to insert — ("enabled Indians, who take an interest in politics and public affairs, to turn their "attention to a subject which has ever possessed a particular fascination for "persons of quick and ingenious mind—what should be the ideal form of Government for their country.")

The amendment, by leave of the Committee, is withdrawn

It is moved by the Lord Eustace Percy Page 6, lines 40 to 42, to leave out from ('has") in line 40 to the end of line 42 and to insert ("set Indians "free to turn their minds to other things, and in particular to the broader 'political and economic interests of their country Finally by directing "their attention")

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Line 47, after ("self-government,") to insert ("inasmuch as it is the mark of a self-respecting and self-reliant people to shoulder the burdens and responsibilities of their "own government;").

The amendment by leave of the Committee is withdrawn.

Paragraph 10 is again read, as amended.

The further consideration of paragraph 10 is postponed.

Paragraph 11 is again read.

It is moved by Sir Reginald Craddock. Page 7, line 32, to leave out ("receptive of political arguments") and to insert ("susceptible to political agitation.")

The same is agreed to.

Paragraph 11 is again read, as amended.

The further consideration of paragraph 11 is postponed.

Paragraph 12 is again read.

It is moved by the Marquess of Linlithgow. Page 8, line 1, to leave out ("council") and to insert ("counsel").

The same is agreed to.

Paragraph 12 is again read, as amended.

The further consideration of paragraph 12 is postponed.

Paragraph 13 is again read.

It is moved by the Marquess of Linlithgow. Page 9, line 20, to leave out ("beliefs") and to insert ("belief").

The same is agreed to.

Paragraph 13 is again read, as amended,

The further consideration of paragraph 13 is postponed.

Paragraphs 15 and 16 are again postponed.

Paragraph 17 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian) and Mr. Foot. Page 11, lines 22 and 23, to leave out from ("Provinces") in line 22 to ("has") in line 23 and to insert ("was designed to develop a sense "of responsibility and it has in fact given a considerable number of public men experience of the responsibilities of government either as Ministers or executive Councillors or as members of the majority on which Ministers "have relied for support in the Legislatures. On the other hand the dyarchic "system").

The same is agreed to.

It is moved by the Lord Ker (M. Lothian) the Marquess of Reading, and Mr. Foot. Page 11, line 25, after ("character") to insert ("born of experience").

The same is agreed to.

Paragraph 17 is again read, as amended.

The further consideration of paragraph 17 is postponed.

Paragraph 18 is again read.

It is moved by the Marquess of Linlithgow. Page 11, line 40, to leave out ("material and intellectual").

It is moved by the Lord Eustace Percy. Page 11, line 44, to page 12, line 2, to leave out from the beginning of line 44 on page 11 to ("can") in line 2 on page 12 and to insert ("This attitude of non-interference has not, "indeed, prevented the Government of India from introducing reforms in "many matters, to use Lord Lansdowne's words, 'where demands preferred "in the name of religion would lead to practices inconsistent with individual safety and the public peace, and condemned by every system of law and "morality in the world." Yet it must be recognised that, in a country where the habits and customs of the people are so closely bound up with their religious beliefs, this attitude, however justifiable it may have been, has "sometimes had the result of making it difficult for the Government to carry "into effect social legislation in such matters (to name only two obvious instances) as child marriage and the problem of the untouchables. It has become increasingly evident in recent years that the obstacles to such 'legislation'").

The same is agreed to.

Paragraph 18 is again read, as amended.

The further consideration of paragraph 18 is postponed.

Paragraph 19 is again read.

It is moved by the Viscount Halifax. Page 12, line 25, after ("future") to insert ("In the special circumstances of India").

The same is agreed to.

It is moved by the Viscount Halifax. Page 12, lins 26, to leave ont ("expressed") and to insert ("reinforced").

The same is agreed to.

Paragraph 19 is again read, as amended.

The further consideration of paragraph 19 is postponed.

Paragraph 20 is again read.

It is moved by the Lord Eustace Percy. Page 12, line 32, after ("life.") to insert:—

("It must give full weight, indeed, to the testimony of the Statutory Commission that, in spite of the disadvantages of dyarchy on which the Commission laid such stress, Indians have shown, since 1921, a marked capacity for the orderly conduct of Parliamentary business, a capacity which has grown steadily with the growth of their experience. We cannot doubt that this apprenticeship in Parliamentary methods has profoundly affected the whole character of Indian public life, both by widening the circle of those who have had practical contact with the affairs of government and by stimulating the growth of a public conscience amongst the educated classes as a whole. But other facts must also be frankly recognized.")

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 12, line 36, to leave out ("two organized") and to insert ("great").

The same is agreed to.

It is moved by the Lord Snell. Page 12, line 37, to leave out from ("each") to the second ("and") and to insert ("desiring to act with public spirit "and in good faith;")

It is moved by the Lord Ker (M. Lothian). Page 13, line 2, to leave out from (" caste ") to (" In ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Austen Chamberlain. Page 13, line 2, to leave out from (" itself ") to ("democratic ") and to insert (" inconsistent with.")

The same is agreed to.

Paragraph 20 is again read, as amended.

The further consideration of paragraph 20 is postponed.

Paragraphs 21 to 23 are again postponed.

Paragraph 24 is again read.

It is moved by the Lord Eustace Percy. Page 15, lines 4 and 5 after (" a ") in line 4 to insert (" strong and impartial") and to leave out (" at once distinterested and incorruptible.") in lines 4 and 5.

The same are agreed to.

It is moved by the Lord Eustace Percy. Page 15, lines 6 and 7, to leave out from (" prized ") in line 6 to (" In ") in line 7.

The same is agreed to.

Paragraph 24 is again read, as amended.

The further consideration of paragraph 24 is postponed.

Paragraph 25 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 15, lines 30 and 31, to leave out from ("whole,") in line 30 to the end of the sentence and to insert ("and for intervention should the responsible Ministries and "legislatures fail in their duty").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 25 is again read.

The further consideration of paragraph 25 is postponed.

Paragraph 26 is again read.

It is moved by the Lord Eustace Percy. Page 16, lines 16 to 18, to leave out from ("India") in line 16 to the end of the paragraph.

The same is agreed to.

Paragraph 26 is again read.

The further consideration of paragraph 26 is postponed.

Paragraphs 27 to 29 are again postponed.

Paragraph 30 is again read.

It is moved by the Lord Ker (M. Lothian) and Mr. Foot. Page 18, lines 29 and 30, to leave out from ("to") in line 29 to the end of line 30 and to insert ("give steadfast support to strong and stable central government").

The same is agreed to.

Paragraph 30 is again read, as amended.

The further consideration of paragraph 30 is postponed.

Paragraph 31 is again read.

It is moved by Sir John Wardlaw-Milne. Page 19, line 26, to leave out ("incoherence") and to insert ("confusion").

The same is agreed to.

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed.

Paragraphs 32 to 36 are again read and postponed.

Paragraph 37 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20b, lines 24 and 25, to leave out from ("both") to the end of the sentence.

The same is agreed to.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20b, line 34, at the end to insert ("Nor do we think that the "political life of India can safely be divided into watertight compartments." Important problems in the field of social reform will have to be dealt with "by the central as well as by the provincial legislatures. The control of the "economic life of India will depend more upon the federal legislature than "upon the provinces. To place full responsibility for these subjects upon "Indian Ministers and legislatures in the provinces, while imposing the "responsibility for them in the centre on the Governor-General subject to "constant criticism by a legislature which is not responsible seems to us "likely to produce the maximum of friction if it did not lead to deadlock.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 37 is again read, as amended.

The further consideration of paragraph 37 is postponed.

Paragraph 38 is again read.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20b, line 35, to leave out ("Lastly, the line can") and to insert ("We think therefore that the third of the three possible lines of division is by far the best, namely that the line should"),

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20b, line 40, after ("Departments") to insert ("This would be, "in effect, to make Indians responsible for policy over the whole field of "internal government while reserving to the Governor-General responsibility "for defence and foreign policy and imposing upon the Governor-General and "the Governors a special responsibility for safeguarding law and order, the "rights of minorities, the ultimate stability of the finances, the legitimate "interests of the Services and a number of other matters over the whole field "of government, if, and only if, the responsible Ministries and legislatures fail to discharge the responsibility placed on them under the new "constitution.")

The amendment by leave of the Committee, is withdrawn.

It is moved by the Marquess of Reading, the Lord Ker (M. Lothian), and Mr. Foot. Page 20c, line 24, to leave out ("with much force").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 38 is again read.

The further consideration of paragraph 38 is postponed.

Paragraph 39 is again read.

It is moved by the Lord Ker (M. Lothian), the Marquess of Reading, and Mr. Foot. Page 20c, line 41, after ("finance") to insert ("The existence of a "large standing charge for defence does not lessen the financial responsibility "of Ministers. Far the greater part of most national budgets are, in effect, "unalterable because they are the results of commitments arising out of the past in the field of foreign relations or of social reform. The margin of discretion which is available to Ministers anywhere in increasing or reducing taxation or altering expenditure is usually small and this margin, "in India, will be within the control of Ministers, subject to the Governor-"General's special responsibility in the financial sphere. Ministers will "naturally wish to save money on defence in order that they may spend it

"on 'nation' building 'departments under their own charge. But in point of fact the cost of Indian defence, though a large proportion of the Central budget is, compared with the whole of the resources of India, central and provincial considerably less than the cost of defence in some other countries containing a smaller population than that of India. We believe that responsible Indian Ministers will be not less anxious for adequate 'defence that the Governor-General and will usually after discussion with him, support his view of what is necessary and will be able to convince their following in the legislature that it is sound ")

The same is agreed to

Paragraph 39 is again read, as amended

The further consideration of paragraph 39 is postponed

Paragraph 40 is again postponed

Paragraph 41 19 again read

It is inoved by the Marquess of Linhthgow Page 20e, line 26 to leave out ("Whose opinions are") and to insert (their opinions have been ")

The same is agreed to

It is moved by the Marquess of Limithgow Page 20e lines 26 and 27, to leave out ('who are ") and to insert ("they have shown themselves")

The same 19 agreed to

Paragraph 41 is again read, as amended

The further consideration of paragraph 41 is postponed

Paragraph 42 is again postponed

Parograph 42A is again read

It is moved by the Lord Eustace Percy Page 20g, line 13, after ("plain") to insert ("The plea put forward by Indian public men on behalf of India is "essentially a plea to be allowed the opportunity of applying principles and doctrines which England herself has taught, and all sections of public opinion in this country are agreed in principle that this plea should be "admitted")

The same is agreed to

It is moved by the Lord Eustace Percy Page 20g, line 21, after ("rejected") to insert ('the rejection will be generally regarded in India as a denial of the whole plea and")

The same is agreed to

It is moved by the Lord Eustace Percy Page 20g, line 23, after the first ("the") to insert ('measure of harmony achieved in British India by the ")

The same is agreed to

Paragraph 42A is again read, as amended

The further consideration of paragraph 42A is postponed.

Paragraph 42B is again postponed

Ordered, that the Committee be adjourned till to-morrow at half-past Ten o'clock

## Die Martis 31° Julii 1934

#### Present:

LORD ARCHBISHOP OF CANTERBURY.

Marquess of Salisbury.
Marquess of Zetland.

MARQUESS OF LINLITHGOW. MARQUESS OF READING.

EARL OF DERBY. EARL PEEL.

VISCOUNT HALIFAX. LORD MIDDLETON.

LORD KER (M. LOTHIAN).

LORD HARDINGE OF PENSHURST.

LORD SNELL.

LORD RANKEILLOUR

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE. Mr. Morgan Jones.

LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

Paragraphs 43 to 63 are again postponed.

Paragraph 64 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 30, line 23, to leave out from ("in") in line 23 to ("to") in line 24 and to insert ("the "exercise of any powers conferred on him by the Constitution Act, except "in relation to such matters as will be left by that Act").

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Page 30, line 39, after ("practice.") to insert ("It follows from what we have said above that the "Ministers will not be concerned with the appointment of the Governor "himself").

The same is agreed to.

Paragraph 64 is again read, as amended.

The further consideration of paragraph 64 is postponed.

Paragraphs 65 to 132 are again postponed.

Paragraph 133 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 66, line 6, after ("c.g.") to insert ("by allowing women to make application by letter "(responsibility for satisfying the registering officer of their eligibility for enrolment resting with the applicant)").

The same is agreed to.

Paragraph 133 is again read, as amended.

The further consideration of paragraph 133 is postponed.

Paragraphs 134 to 161 are again postponed.

Paragraph 162 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 83, line 4, at the end to insert ("It is hardly necessary to add that Ministers will not be concerned with the appointment of the Governor-General himself.")

The same is agreed to.

Paragraph 162 is again read, as amended.

The further consideration of paragraph 162 is postponed.

Paragraphs 163 to 173 are again postponed.

All amendments are to the Draft Report (vide infra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published. (Vol. I, Part I). A Key is attached (see pp. 521-544), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 174 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 88, line 32, at the end to insert ("It has been urged upon us that, in order to build up an "informed opinion upon Defence questions, a statutory Committee of the "Legislature should be established. We understand that, outside the formal "opportunities of discussing Defence questions on such occasions as the "Defence Budget, opportunities are already given to members of the Legis-"lature to inform themselves upon Army questions; and, provided that the "extent and methods of consultation are clearly understood to rest in the "discretion of the Governor-General, we see no objection to the formation of any Committee or Committees that the Federal Government and "Legislature may consider useful. We feel, however, that this is essentially a "question to be settled by the Legislature and not by the Constitution Act.")

The same is agreed to.

Paragraph 174 is again read as amended.

The further consideration of paragraph 174 is postponed.

Paragraphs 175 to 203 are again postponed.

Paragraph 204 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 102, line 24, to leave out ("nine") and to insert ("six").

Objected to.

On Question :-

Contents (4).

Earl Peel. Mr. Butler. Sir Samuel Hoare. Earl Winterton.

Not Contents (21). Lord Archbishop of Canterbury. Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl of Derby Viscount Halifax. Lord Middleton. Lord Ker (M. Lothian). Lord Hardinge of Penshuret. Lord Snell. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Attlee. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Mr. Foot. Lord Eustace Percy. Sir John Wardlaw-Milne.

The said amendment is disagreed to.

Paragraph 204 is again read.

The further consideration of paragraph 204 is postponed.

Paragraphs 205 to 227 are again postponed.

The Appendix (II) is again read.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 115, line 15, after ("House.") to insert ("The question of special provision for the Depressed Classes among the General seats requires consideration especially in relation to the Central Provinces").

The same is agreed to.

The Appendix (II) is again read, as amended.

The further consideration of Appendix (II) is postponed.

The Appendix (III) is again postponed.

Paragraphs 228 to 330 are again postponed.

Paragraph 331 is again read.

It is moved by the Lord Eustace Percy. Page 183, lines 2 to 6, to leave out from ("dominion") in line 2 to ("Lastly") in line 6.

The same is agreed to.

Paragraph 331 is again read, as amended-

The further consideration of paragraph 331 is postponed.

Paragraph 332 is again read.

It is moved by the Marquess of Linlithgow. Page 183, in the footnote after ("etc.") to insert ("by whomsoever made").

The same is agreed to.

Paragraph 332 is again read, as amended.

The further consideration of paragraph 332 is postponed.

Paragraphs 333 to 336 are again postponed.

Paragraph 337 is again read.

It is moved by the Marquess of Linlithgow. Page 184, line 37, to leave out from ("that") to ("shall") and to insert ("a proportion of the directors "(which should, we think, not exceed one-half of the total number).")

The same is agreed to.

Paragraph 337 is again read, as amended.

The further consideration of paragraph 337 is postponed.

Paragraph 338 is again read.

It is moved by the Marquess of Linlithgow. Page 184, line 43, to page 185, line 1, to leave out from the beginning of the paragraph to, ("But") in line 1, page 185.

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 2, to leave out ("clearly") and to insert ("still").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, lines 3 and 4, to leave out ("in accordance with these statutory prohibitions").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 28, to leave out ("found themselves strictly bound") and to insert ("regarded the exercise" of their discretion as restricted").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 29, after ("that") to insert ("the Instrument of Instructions of the Governor-"General and the Governor should require him,").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 30, to leave out ("the Governor-General or a Governor") and to insert ("he").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, lines 32 and 33, to leave out ("he should be instructed").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 185, line 34, at the end to insert ("We need hardly add that the effect of our recommendations for the statutory prohibition of certain specified forms of discrimination "would lay open to challenge in the Courts as being ultra vires any legislative "enactment which is inconsistent with these prohibitions, even if the Governor-"General or the Governor has assented to it").

Paragraph 338 is again read, as amended.

The further consideration of paragraph 338 is postponed.

Paragraph 339 is again read.

It is moved by Sir John Wardlaw-Milne. Page 185, line 42, to page 186, line 5, to leave out from (" suggestion.") in line 42, page 185, to (" But ") in line 5, page 186, and to insert (" Except in certain cases in which a qualification "has been specially recognised by or under some Indian law as giving a title "to practice, persons holding United Kingdom qualifications at present follow "their professions in India without restraint but have always been subject " to such restrictions as the present Indian Legislatures might have imposed "We think that the Indian Legislatures of the future should equally be free "to prescribe the conditions under which the practice of professions generally ' is to be carried on.")

The same is agreed to.

Paragraph 339 is again read, as amended.

The further consideration of paragraph 339 is postponed.

Paragraphs 340 to 348 are again postponed.

Paragraph 349 is again read.

It is moved by Sir Samuel Hoars and Mr. Butler. Page 191, line 45, to leave out (" assessed ") and to insert (" determined, either in the first instance or on appeal,").

The same is agreed to.

Paragraph 349 is again read, as amended.

The further consideration of paragraph 349 is postponed.

Paragraph 350 to 370 are again postponed.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 202, line 17 after paragraph 370 (and before the appendix) to insert the following new paragraph:

(" 370A. We attach special importance to the arbitration procedure mentioned above as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State. The Constitution Act should Railways. contain and questy and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, their right to do so should be subject to appeal by the Railway Authority to the same tribunal.")

The same is agreed to.

New paragraph 370A is again read.

The further consideration of paragraph 370A is postponed.

The Appendix (IV) is again postponed.

Paragraphs 371 to 413 are again postponed.

Paragraph 414 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 229, lines 7 to 9 to leave out from (" Ministers.") in line 7 to (" but ") in line 9, and to insert ("To avoid repeating at length what we have already said in earlier parts of "our Report, we think it desirable to make clear at this point our intention "that the modifications which we have recommended in the proposals in the " Indian White Paper should mulais mulandis be applied to the corresponding " proposals in the Burma White Paper.")

Paragraph 414 is again read, as amended. The further consideration of paragraph 414 is postponed.

Paragraph 415 is again read.

It is moved by Sir Samuel Hoare and Mr Bntler. Page 229, lines 27 to 41, to leave out from ("accepted") in line 27, to the end of the paragraph and to insert ("Prima facie the same considerations apply in Burma as would "apply if she were not separated from India hut continued to constitute a "Province of British India" But it is necessary to take into account the special "factors which characterise conditions in Burma")

The same is agreed to.

Paragraph 415 ia again read, as amended.

The further consideration of paragraph 415 is postponed.

It is moved by Sir Samuel Hoare and Mr. Bntler. Page 229, after paragraph 415, to insert the following new paragraph:—

"415A. Terrorism of the Bengal type is, we are informed, practically unknown as an indigenous movement among Burmans, though the Indian population in Rangoon does, we believe, from time to time include emissaries of the Bengal movement and the communal question, so far as it arises from strong religious antagonisms is comparatively unimportant in Burma though even there, within the resident Indian community, Hindu-Moslem conflicts are not unknown. But the place of these menaces to ordered Government is taken by racial rivalnes between Indian and Burman, Burman and Chinese, and sometimes between Karen and Burman, which upon occasions have flared up into acts of violence or persecution; not many years ago the racial rivalry between the Burmans and the Indian community developed into a senous menace to the safety of the latter in the Delta and Coastal Districts, in which richer tracts it holds an increasingly important share in commerce, trade and labour supply. Again, serious crime—especially crimes of violence—appears to be more rife in Burma than in India. In proportion to population the percentage of murders, dacoities and cattle thefts exceeds (often greatly exceeds) the percentage in almost every other Province in British India II has frequently been necessary to adopt special measures to deal with largescale darnities accompanied by murder, and woves of this type of crime are apt to develop into rebellions and guerilla warfare, as was shown hy the recent grave rebellion and other similar revolts in the history of the country The peace of the Province has at intervals heen disturbed by conspiracies, sometimes originating across the horder, led by exile pretenders claiming royal descent, or hy persons supposed to be reincarnated national heroes, who play on the superstitions of the ignorant people. All these movements, if not properly handled from the outset, may throw a countryside into disorder and panic, and cause loss of life and property.

Nevertheless, we are of opinion that the responsibility for Law and Order ought in future to rest on Ministers in Burma no less than in India, and for substantially the same reasons. But, at the same time, taking into consideration the special features which we have described, of the situation in Burma, we think it essential that not only should the Governor of Burma have a special responsibility for the prevention of any grave menace to the peace and tranquility of Burma and the powers that flow from this responsibility, but also that he, no less than the Governors of Indian Provinces, should be invested with the statutory powers which we have recommended in their case to equip them against attempts to overthrow by violence the Government established by law

Further, the conditions which we have depicted manifestly necessitate the maintenance of an efficient and highly disciplined Police Force in Burma, and we are strongly of opinion that the recommendations

which ve have made in an earlier passage for the protection of the Police Force in Indian Provinces by protecting the statutes and rules which govern its internal organisation and discipline, should be adopted ın Buıma also ")

The amendment, by leave of the Committee, is withdrawn

Paragraphs 416 to 425 are again postponed

Paragraph 426 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 234, line 29, after (" dissolved ") to insert a reference to the following footnote .-

" \*The power of dissolution rests, of course, with the Governor in his discretion see paragraph subra "

The same is agreed to

Paragraph 426 is again read, as amended

The further consideration of paragraph 426 is postponed.

Paragraphs 427 to 430 are again postponed

Paragraph 431 is again read

It is moved by Sir Samuel Hoarc and Mr Butler. Page 237, lines 19 to 26, to leave out from ("State.") in line 19 to ("conflicts') in line 26

The same is agreed to

Paragraph 431 is again read, as amended

The further consideration of paragraph 431 is postponed.

It is moved by Sir Samuel Hoare and Mr. Butler Page 241, after paragraph 438, to insert the following new paragraph -

("439A There is a matter of importance to which it will be convenient Ratios of to refer at this point, namely, the principles on which recruitment to the Burnan re Services which in Burma after separation will correspond to the All India crimment Services should be based. The Statutory Commission when recording in general terms its views as to the Government of a separated Burma laid great stress on the importance of building up these Services in the tradition of the All-India Services which they will replace, and said 'The pace of Burmanisation must be decided on its merits' ratios of European and Indian recruitment to the Indian Civil Service and Indian Police which were approved in 1924 on the recommendation of the Lee Commission were designed to produce an equality of Europeans and Indians (in which term Burmans are included for this purpose) for India, including Burma, regarded as a whole, by 1939 in the Indian Civil Service and by 1949 in the Indian Police The basis of calculation was an All-India average, and it has always been recognised that whereas, by the dates mentioned, there will be more Indians than Europeans in those Services in some Provinces, in others there will be fewer Burma falls in the latter category From figures which have been laid before us showing e change in ratio in the Indian Civil Service in Burma during the last de .Je, it is clear that an equality of Europeans and Burmans is unlikely to be attained by 1939, nor, we are informed, is equality likely to be attained in the Indian Police in Burma by 1949. Any attempt to expedite the attainment of such equality hy sacrificing the standard required of recruits would be destructive of the principle on which the Statutory Commission laid such emphasis, and might well he disastrous to Burma We are of opinion that the proportion of Europeans and Burmans in the Services which in a separated Burma will take the place of the Indian Civil Service and the Indian Police will be a relevant consideration in deciding when the projected enquiry into the question of future recruitment should take place for Burma, and we wish to endorse the opinion held by the Statutory Commission in the passage cited that, in the meantime, the important thing in Burma's interests is to preserve the standard of recruitment without too close a

consideration for the early attainment in Burma of what was no more than an average figure, calculated for the whole of India without strict regard to differing conditions in differing Provinces.")

The same is agreed to.

New paragraph 438A is again read.

The further consideration of paragraph 438A is postponed.

Paragraphs 439 to 442 are postponed.

Paragraph 443 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 243, line 5, after ("and") to insert ("we approve them subject to the general application "to the case of Burma, mutatis mutandis, of the modifications which we have "made in the corresponding proposals originally submitted to us in relation "to India. In particular we recommend that there should be imposed on the Governor of Burma an additional special responsibility corresponding "to that which we have recommended should be imposed on the Governor-"General of India for the prevention of discriminatory or penal treatment of imports from the United Kingdom.")

The same is agreed to.

Paragraph 443 is again read, as amended.

The further consideration of paragraph 443 is postponed

It is moved by Sir Samuel Hoare and Mr. Butler. Page 243, after paragraph 443, to insert the following new paragraph:—

enal disimination ninst imports and from propagationia.

(" 443A. The general principle underlying the proposals submitted to us in this regard is that, inasmuch as the association between India and Burma in the last 50 years has been, broadly, of a similar nature to that which has been built up over a longer period between the United Kingdom and India, Indians should be afforded in Burma, generally, the same measure of protection, in regard to their business avocations and commercial undertakings as we have recommended for United Kingdom subjects. We think that this is right. Pursuing this principle, we think that the additional responsibility which, as we have mentioned in the preceding paragraph, should be laid upon the Governor to protect imports into Burma from the United Kingdom from penal or discriminatory treatment, should extend to the protection of imports from India into Burma. And, in order that Burma should not be exposed, or feel that she is exposed by this recommendation to unequal treatment in this respect, we think that, reciprocally, the special responsibility with which the Governor-General of India is to be charged under our recommendation should extend to the case of the products of Burma imported into India.")

The same is agreed to.

New paragraph 443A is again read.

The further consideration of paragraph 443A is postponed.

Paragraph 444 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 243, line 11, after ("referred") to insert ("deals also with a particular problem affecting the right of entry of Indian subjects into Burma. It")

The same is agreed to.

Paragraph 444 is again read, as amended.

The further consideration of paragraph 444 is postponed.

Paragraphs 445 to 453 are again postponed.

Ordered, that the Committee be adjourned till to-morrow at half-past Two o'clock,

1 Subra. para. 329.

# Die Mercurii 1° Augusti 1934

### Present:

LORD ARCHBISHOP OF CANTERBURY. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF READING. EARL OF DERBY. VISCOUNT HALIFAX. LORD MIDDLETON. LORD KER (M. LOTHIAN).

LORD HARDINGR OF PENSHURST. LORO SNELL.

LORD RANKEILLOUR,

LORD HUTCHISON OF MONTROSE.

MR. ATTLEE. MR. BUTLER. MATOR CADOGAN. SIR AUSTEN CHAMBERLAIN.

Mr. Cocks. SIR REGINALD CRADDOCK.

MR. DAVIDSON.

SIR SAMUEL HOARE. Mr. Morgan Jones.

SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

# THE LORD ARCHBISHOP OF CANTERBURY in the Chair.

The Order of Adjournment is read.

The Proceedings of waterday are read.

Paragraph 1 is again ... . poned.

Paragraph 2 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 3, line 40, after ("communities,") to insert (" and to the Indian Christians now numbering some 6,000,000 ").

The same is agreed to.

Paragraph 2 is again read, as amended.

The further consideration of paragraph 2 is postponed.

Paragraphs 3 to 24 are again postponed.

Paragraph 25 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 15, line 26, to leave out (" It") and to insert ("Under the new system of Provincial Autonomy, it will be an authority held, as it were, in reserve; but those upon whom it is conferred must "at all times be ready to intervene, if the responsible Ministers and the Legislatures should fail in their duty. This power of intervention

The same is agreed to.

Paragraph 25 is again read, as amended.

The further consideration of paragraph 25 is postponed.

Paragraph 26 is again postponed.

Paragraph 27 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy. Page 16, line 38, to leave out from ("risks") to the end of the paragraph and to insert (" If Parliament should decide to create an All-India Federation, "the actual establishment of the new Central Legislature may without "danger be deferred for so long as may be necessary to complete arrangements " for bringing the representatives of the States into it; but its form must be " defined in the Constitution Act itself.")

The same is agreed to.

Paragraph 27 is again read, as amended.

The further consideration of paragraph 27 is postponed.

All amendments are to the Draft Report (vide supra, paras. 1-42B, pp. 470-491; and vide supra, paras. 43-453, pp. 64-253) and NOT to the Report as published. (Vol. I. Part I.)

A Key is attached (see pp. 521-514), showing on which pages of the Proceedings amendments to be a contracted. ments to each paragraph can be found.

Paragraph 28 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy Page 16, lines 43 to 45, to leave out from the beginning of the paragraph to the end of line 45, and to insert ("This brings us to the further proposal "laid before us, that the Constitution Act should also determine the conditions "upon which an All-India Federation is to be established,")

The same is agreed to

Paragraph 28 is again read, as amended

The further consideration of paragraph 28 is postponed

Paragraphs 29 and 30 are again postponed

Paragraph 31 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 19, line 9, to leave out ("one-sixth") and to insert ("one-fourth").

The same is agreed to

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed

Paragraphs 32 to 37 are again postponed.

Paragraph 38 is again read

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow Page 20B, lines 38 to 40, to leave out from ("subject") in line 38 to the end of the sentence and to insert ("to the retention by the "Governoi-General of the special powers and responsibilities, outside his "Reserved Departments, annular to (though not necessarily in all respect "identical with) those which we contemplate should be conferred on the "Provincial Governors" The nature of the central safeguards which would in that event be necessary will be discussed, like the provincial safeguards, in the body of our Report, but, subject to them, the effect of drawing the "line on this point would be to make Indians responsible for policy over the "whole field of government")

The same is agreed to

Paragraph 38 is again read, as amended

The further consideration of paragraph 38 is postponed.

Paragraphs 39 to 43 are again postponed

Paragraph 44 is again read

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linhthgow Page 21, line 32 at end to insert ('We should add that we have not thought it necessary to mention in our Report every matter of detail with which the White Paper deals, but only those which appear to us of sufficient general importance to warrant discussion. It may be assumed that we have no comment to offer on the proposals in the White Paper to which we make no special reference and we are content to leave them to be dealt with at the discretion of His Majesty's Government in the legislative proposals which they will lay before Parliament")

The same is agreed to.

Paragraph 44 is again read, as amended

The further consideration of paragraph 44 is postponed.

Paragraphs 45 to 121 are again postponed

Paragraph 122 is again read

It is moved by The Lord Rankeillour and the Marquess of Zetland. Page 60, line 25. At the end to insert. ("We have in other respects followed the "scheme already proposed for the United Provinces in preference to that

"suggested for Bengal and Bihar. We think it inexpedient that so large a proportion of the Second Chamber should be chosen by the First and.

"thereby presumably reflect their views.")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour and the Marquess of Zetland. Page 60, line 25. At the end to insert (" We think that the Legislative Council "should not be dissoluble, but that one-third of its members should retire at "fixed intervals.")

The same is agreed to.

Paragraph 122 is again read as amended.

The further consideration of paragraph 122 is postponed.

Paragraphs 123 to 141 are again postponed.

Paragraph 142 is again read.

It is moved by the Lord Archbishop of Canterbury on behalf of the Marquess of Linlithgow. Page 69, lines 16 and 17, to leave out from the beginning of the paragraph to ("ample") in line 17, and to insert ("We approve the "proposals in the White Paper that the power to summon and appoint "places for the meeting of the Provincial Legislature, and the power of "prorogation and dissolution shall be vested in the Governor at his discretion. It is rightly proposed that the Provincial Legislature itself shall "have")

The same is agreed to,

Paragraph 142 is again read, as amended. The further consideration of paragraph 142 is postponed.

Paragraphs 143 to 147 are again postponed.

The Appendix (I) is again read.

It is moved by Mr. Butler and Sir Samuel Hoars. Page 73. To omit the column of figures under the heading Madras in order to insert

The same is agreed to.

The Appendix (I) is again read, as amended.

The further consideration of the Appendix (I) is postponed.

Paragraphs 148 to 306 are again postponed.

s 4

Paragraph 307 is again read, as amended.

It is moved by Sir Samuel Hoare and Mr Butler Page 170, to leave paragraph 307 as amended and to insert the following new paragraph

('307 There is, however, one category of pension payments stands apart from the rest, namely, the pensions payable to famil officers, civil and military, the cost of which is met not from the rect of India but from funds accumulated by means of subscriptions of the officers themselves. These accumulated funds are in comproperty of the subscribers, and we think it right that the full consideration should be given to their views as to the dimoney. A full account of the nature of the Tunds and already taken to ascertain the views of subscribers is give, by the Secretary of State for India which is printed in the Co-Records. The Note also contains in some detail proposals for meeting the subscribers' wishes. We recommend that His Majesty's Government should take action on the lines indicated in this Note.

The same is agreed to

New Paragraph 307 is again read The further consideration of paragraph 307 is postponed.

Paragraphs 308 to 414 are again postponed.

Paragraph 415 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 229, lines 27 to 41, to leave out from ("accepted') in line 27 to the end of the paragraph and to insert ("In general the same considerations apply in Burma, if separated, as apply in the other Provinces of British India But there are certain special circumstances which we think it right to mention On the one hand "Terrorism of the Bengal type is practically unknown among the Burman people, and communal strife arising from strong religious antagonisms is rare and unimportant. To this extent the problem is less difficult than "in other Provinces On the other hand Burma exhibits racial rivalnes "which on account have developed into volunt vota between one com-"munity and another, and serious crime—especially crimes of violence— "appears to be more rife in Burma than in India, in proportion to popu-"lation the annual record of dacoities, murders and cattle thefts is very high! "This no doubt, is due, in part, to the fact that barely 50 years have elapsed "since, with the conquest of Upper Burma, British authority was established "throughout the Province, and British ideas of Law and Order began to be "instilled into the whole countryside To this fact and perhaps also in some "degree to the Burman temperament may, we think, be attributed the "organised resistance to authority, amounting to armed rebellion and "guerilla warfare, which has at times even within the past few years affected "a large number of districts and which owing to the difficult nature of the "country and the lack of good communications, has proved very trouble-"some to put down Nevertheless we are of opinion that the responsibility "for Law and Order ought in future to rest on Ministers 10 Burma no less "than in India and for substantially the same reasons. At the same time, bearing in mind the special features of the problem that we have described, "we think it essential that the Governor of Burma should have powers "additional to the povers flowing from his special responsibility for the "prevention of any grave menace to the peace and tranquility of Burma "as proposed in the Burma White Paper He, like the Governors of Indian "Provinces, should be vested with the statutory powers which we have

<sup>&</sup>lt;sup>1</sup> Records [1932-33], pp 139-142.

recommended in their case to equip them against attempts to overthrow by violence the Government established by law. Further, conditions in Burma manifestly necessitate the maintenance of an efficient and highly ciplined police force, and we are of opinion that the recommendations hich we made in an earlier passage for the protection of the police forces Indian Provinces by protecting the statutes and rule which govern its outcinal organisation and discipline should be adopted in Burma also.") The same is agreed to.

Paragraph 415 is again read, as amended. The further consideration of paragraph 415 is postponed.

Paragraphs 416 to 453 are again postponed.

Paragraphs 1 to 138 are again postponed.

Paragraph 139 is again read, as amended, and is as follows -

"139 We do not think that the consent of the Governor should any longer be required to the introduction of legislation which affects religion or religious rites and usages We take this view, not because we think that approved. the necessity for such consent might prejudice attempts to promote valuable social reforms, which has been suggested as a reason for dispensing with it, but because in our judgment legislation of this kind is above all other such as ought to be introduced on the responsibility of Indian Ministers We have given our reasons elsewhere for holding that matters of social reform which may touch, directly or indirectly, Indian religious beliefs can only be undertaken with any prospect of success by Indian Ministers themselves, and, that being so, we think it undesirable that their responsibility in this most important field should be shared with a Governor. It has been objected that the mere introduction of legislation affecting religion or religious rites and usages might be dangerous at times of religious or communal disturbance, and might indeed itself produce such disturbance We observe, however, a Proposal in the White Paper whereby the Governor would be empowered, in any case in which he considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquillity of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with This appears to us an ample safeguard against the danger to which we have referred, and in addition it would of course always be open to the Governor, in his discretion, to refuse his assent to any Bill which has been passed by the Legislature, if in his opinion it is undesirable on any ground that it should become law. We had also thought at first that a Provincial Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor to its introduction in the Legislature might be required. We understand, however, that the great bulk of the existing law in India is the work of Indian legislative bodies and that there are in fact very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have not power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the provincial sphere. In these circumstances we

The White Paper

think that the proposal should stand; but the Governor's Instrument of Instructions might perhaps direct him to reserve bills which appear to him to fall within this category."

It is moved by the Lord Rankeillour. Lines 23 and 24, to leave out from ("with.") in line 23 to ("and") in line 24 and to insert ("If this "provision were extended to cover the case of the Governor's other "special responsibility for the protection of the legitimate interests of "minorities there would, in our opinion, be ample safeguards against "the dangers both of public disturbance and of possible oppression of "small communities unable or unwilling to give serious trouble.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 139 is again read, as amended. The further consideration of paragraph 139 is postponed.

Paragraphs 140 to 453 are again postponed.

Ordered, that the Committee be adjourned to Monday the 8th of October next at Three o'clock.

## Die Lunse 8° Octobris 1934

### Present:

LORD ARCHBISHOP OF CANTERBURY. Mr. ATTLEE. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. LORD MIDDLETON. LORD HARDINGE OF PENSHURST. LORD SNELL.

LORD RANKEULOUR.

LORD HUTCHISON OF MONTROSE.

MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

MR. COCKS.

SIR REGINALD CRADDOCK.

MR. DAVIDSON. Mr. FOOT.

SIR SAMUEL HOARE. MR. MORGAN JONES. SIR JOSEPH NALL.

LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of Wednesday the 1st of August last are read.

Paragraph 1 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Marquess of Zetland. Page 3, line 14, to leave out ("been able to enter upon, much less") and to insert (" found it possible ").

The same is agreed to.

Paragraph 1 is again read, as amended,

The further consideration of paragraph 1 is postponed.

Paragraph 2 is again read.

It is moved by Mr. Cocks. Page 3, line 37, to leave out ("which").

The same is agreed to.

It is moved by the Earl Peel. Page 3, lines 37 and 38 to leave out ("impervious to the more liberal") and to insert ("unaffected by "contract with the "" contact with the ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 4, line 5, after (" owing ") to insert (" in large part ").

The same is agreed to.

Paragraph 2 is again read, as amended.

The further consideration of paragraph 2 is postponed.

All amendments are to the Draft Report (vide supra paras. 1-42B, pp. 470-491; and paras. 42-453, pp. 64-258) and NOT to the Report as published (Vol. I. Part 1).

A Key is attached (see p. 627, et seq.), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 3 is again read.

It is moved by the Marquess of Salisbury. Page 4, line 14, after ("Princes") to insert (" (though in point of fact not all of these six have been continuously "and some have never been represented; and none of them has taken an "active part in the work of the Chamber since 1933)").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 4, line 16, to leave out (" 327") and to insert (" some 300").

The same is agreed to.

Paragraph 3 is again read, as amended.

The further consideration of paragraph 3 is postponed.

Paragraph 4 is again read.

It is moved by the Marquess of Linlithgow. Page 4, line 34, after ("Parliament") to insert ("; and the same is true of the Governors in Council in "relation to the reserved subjects in the Provinces").

The same is agreed to.

It was moved by the Earl Peel. Page 4, lines 38 to 40, to leave out from ("provincial.") to the end of the paragraph.

The same is agreed to.

Paragraph 4 is again read, as amended.

The further consideration of paragraph 4 is postponed.

Paragraph 5 is again postponed.

Paragraph 6 is read, as amended, and is as follows:-

"6. The record of British rule in India is well known. Though we claim for it neither infallibility not perfection, since, like all systems of Governmentalishas, at times, fallen into error, it is well to remember the greatness of its achievement. It has given to India that which throughout the centuries she has never possessed, a Government whose authority is unquestioned in any part of the sub-Continent; it has barred the way against the foreign invader and has maintained tranquillity at home; it has established the rule of law, and, by the creation of a just administration and an upright judiciary, it has secured to every subject of His Majesty in British India the right to go in peace about his daily work and to retain for his own use the fruit of his labours. The ultimate agency in achieving these results has been the power wielded by Parliament. The British element in the administrative and judicial services has always been numerically small. The total European population of British India to-day, including some 60,000 British troops, is only 135,000. The total British element in the Superior Services is about 3,150, and of these there are approximately 800 in the Indian Civil Service and 500 in the Indian Police.

It is moved by the Lord Middleton. Line 2, to leave out (" not ") and to insert (" nor ").

The same is agreed to.

It is moved by Mr. Cocks. Line 5, to leave out (" the ") and  $t^{-}$  insert (" many ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and t Lord Snell. Line 10, after ("right") to insert ("if not the power"? The same is disagreed to.

Paragraph 6 is again read, as amended. The further consideration of paragraph 6 is postponed.

Paragraph 7 is read, as amended, and is as follows:-

"7. The success of British rule cannot be justly estimated without reference to the condition of things which preceded it. The arts of government and administration were not indeed unknown to the earlier Hindu kings like Asoka, and the strong hand of the Mogul Emperors who reigned between 1525 and 1707 maintained a State which ultimately embraced the larger part of India and did not suffer by comparison with, if it did not even surpass in splendour, the contemporary monarchies of Europe. But the strength of the Mogul Empire depended essentially upon the personal qualities of its ruling House, and when the succession of great Emperors failed, its collapse inevitably followed; nor during its most magnificent period was its authority unchallenged either within or without its borders. Its system of government resembled that of other Asiatic despotisms. The interests of the subject races were made subservient to the ambitions, and often to the caprices, of the monarch; for the politic toleration of Akbar and his immediate euccessors disappeared with Aurungzeb. The imperial splendour became the measure of the people's poverty, and their sufferings are said by a French observer, long resident at the Court of Aurungzeb, to have been beyond the power of words to describe.

It is moved by Mr. Cocks. Lines 3 and 4, to leave out ("the earlier Hindu kings like Asoka") and to insert ("the Buddhist Emperor Asoka (264-227 s.c.), one of the greatest and most peace-loving rulers the world has ever seen").

The amendment, by leave of the Committee, is withdrawn.

It is moved by The Lord Hardinge of Penshurst. Line 4, to leave out ("like Asoka").

The same is agreed to.

Paragraph 7 is again read, as amended. The further consideration of paragraph 7 is postponed.

Paragraph 8 is again postponed.

Paragraph 9 is again read.

It is moved by Mr. Cocks. Page 6, lines 25 and 26, to leave out from ("than") in line 25 to the end of the paragraph and to insert ("anything she" has ever been able to achieve in modern, as contrasted with traditional "times.")

The same is disagreed to.

It is moved by Sir Reginald Craddock. Page 6, line 26, after ("history,") to insert ("At the same time the surveys and settlement of the land including "the recognition and determination by law of land tenures, and the just "assessment of the land revenue, together with the preparation and revision "from time to time of the record of rights and customs, have afforded "guarantees of security to the vast agricultural population upon which has depended the welfare of the whole sub-continent.")

The same is agreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 6, line 26, at the end to insert ("It would be to leave one side "of the picture unpainted, however, if we failed to point out that in spite

"of this educational and material progress, which we do not seek to under"estimate—and in this connection it must be mentioned that at no period
of its history has India, which possesses an ancient and unique literature
of its own, been an altogether unenlightened country—the great mass of
the population still remains in a state of extreme poverty, that perhaps in
no other part of the world is to be seen so sharp a contrast between the great
wealth of the comparatively few and the grinding indigence of the many,
that the toiling peasant is still burdened by the exactions of the money"lender and the often absentee landlord and that, according to the Census
of 1921, only 19,800,000 men and 2,800,000 women, or 122 in every 1,000
men and 18 in every 1,000 women, roughly 7 per cent. of the population,
are able to read and write.")
Objected to.

On Question:-

Contents (4).

Lord Snell. Mr. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (20).

Lord Archbishop of Canterbury. Marquess of Salisbury. Marquess of Linlithgow. Earl of Derby. Earl Peel. Lord Middleton. Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain, Sir Reginald Craddock. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy. Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

Paragraph 9 is again read, as amended.

The further consideration of paragraph 9 is postponed.

Paragraph 10 is again read.

It is moved by Sir Austen Chamberlain on behalf of the Marquess of Zetland. Page 6, line 47, to leave out ("enough without ") and to insert ("an acceptable "substitute for ").

The same is agreed to.

It is moved by the Earl Peel. Page 7, lines 2 to 8, to leave out from the beginning of line 2 to the end of the paragraph.

The same is agreed to.

Paragraph 10 is again read, as amended.

The further consideration of paragraph 10 is postponed.

Paragraph 11 is again read.

It is moved by the Lord Eustabe Percy. Fage 7, line 23, after ("been") to insert ("for generations").

It is moved by the Lord Eustace Percy. Page 7, line 24, to leave out (" for many generations ").

The same is agreed to.

Paragraph 11 is again read, as amended.

The further consideration of paragraph 11 is postponed.

Dearagraph 12 is again read.

The is moved by the Marquess of Linlithgow on behalf of Viscount Halifax. ge 7, line 40, after ("India") to insert (", and notably ").

The same is agreed to.

I is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord nell. Page 8, lines 7 to 10, to leave out from the beginning of line 7 to " we ") in line 10.

Objected to.

On Question :---

Contents (4)

Lord Snell

Vir. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (20)

Lord Archbishop of Canterbury.

Marquess of Salisbury. Marquess of Linlithgow.

Earl of Derby. Earl Peel.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan,

Sir Austen Chamberlain.

Sir Reginald Craddock,

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare.

Sir Joseph Nall.

Lord Eustace Percy.

Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord nell. Page 8, after line 35, to insert ("To this we would add the statement made in the revised Instrument of Instructions from His Majesty the King Emperor to the Governor-General of India, dated the 15th March, 1921, which reads :-- For above all things it is our will and pleasure that the plans laid by our Parliament . . . may come to fruition to the end that British India may attain its true place among our Dominions.' ")

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones and the Lord nell. Page 8, after line 35, to insert (" To this we would add the concluding words of the Prime Minister at the Final Session of the first Round Table Conference in January, 1931:—'Finally, I hope, and I trust, and I pray that by our labours together India will come to possess the only thing she now lacks to give her the status of a Dominion amongst the British Commonwealth of nations—what she now lacks for that—the responsibilities and the cares, the burdens and the difficulties, but the pride and the honour of cesponsible self-Government." ")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 12 is again read.

The further consideration of paragraph 12 is postponed.

Paragraph 13 is again read.

It is moved by the Lord Eustace Percy. Page 9, lines 17 and 18, to leave out from ("are") in line 17 to the end of line 18 and to insert ("bound up " with ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 9, line 20, to leave out from ("State") to ("transcending").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 9, lines 21 and 22, to leave out from ("hour") in line 21 to the end of the sentence.

The same is agreed to.

Paragraph 13 is again read, as amended.

The further consideration of paragraph 13 is postponed.

Paragraph 14 is again postponed.

Paragraph 15 is again read.

It is moved by Mr. Cocks. Page 10, line 7, to leave out (" which ") The same is agreed to.

Paragraph 15 is again read as amended.

The further consideration of paragraph 15 is postponed.

Paragraph 18 is again postponed.

Paragraph 17 is again read.

It is moved by the Marquess of Linlithgow. Page 11, lines 30 and 31, to leave out (" action of government is split up into") and to insert (" gov \_nment functions in "). The same is agreed to.

Paragraph 17 is again read, as amended.

The further consideration of paragraph 17 is postponed.

Paragraph 18 is again postponed.

Paragraph 19 is again read.

It is moved by the Marquess of Salisbury. Page 12, lines 10 to 12, to leave out from the second (" the ") in line 10 to (" enforcement ") in line 12.

The same is disagreed to

It is moved by the Marquess or Salisbury. Page 12, lines 13 to 25, to leave out from ("administration") in line 13 to ("In") in line 25.

The same is disagreed to.

Paragraph 19 is read.

The further consideration of paragraph 19 is postponed.

Paragraph 20 is read, as amended, and is as follows -

"20 In establishing, or extending, parliamentary government in British the Provinces, Parliament must take into account the facts of Indian of Parliament life It must give full weight, indeed, to the testimony of the Statutory Commission that, in spite of the disadvantages of dyarchy on which the Commission laid such stress, Indians have shown, since 1921, a marked capacity for the orderly conduct of Parliamentary business, a capacity which has grown steadily with the growth of their experience. We cannot doubt that this apprenticeship in Parliamentary methods has profoundly affected the whole character of Indian public life, both by widening the circle of those who have had practical contact with the affairs of government and by stimulating the growth of a public conscience amongst the educated classes as a whole. But other facts must also be frankly recognized. Parliamentary government, as it is understood in the United Kingdom, works by the interaction of four essential factors: the principle of majority rule, the willingness of the minority for the time being to accept the decisions of the majority; the existence of great political parties differing on questions of policy, but each desiring 18 to act with public spirit and in good faith, and finally the existence of a mobile body of political opinion, owing no permanent allegiance to 20 either Party and therefore able, by its instinctive reaction against extravagant movements on one side or the other, to keep the vessel on an even keel In India none of these factors can be said to exist to day There are no parties, as we understand them, and no mobile 24 body of political opinion. In their place we are confronted with the age-old antagonism of Hindu and Muhammedan, representatives not only of two religious but of two civilisations, with numerous self-contained 'and exclusive minorities, all a prey to anxiety for their future and profoundly suspicious of the majority and of one another, and with the rigid divisions of caste, itself inconsistent with democratic principle. In these curcumstances, communal representation must be accepted as mevitable at the present time, but it is a strange commentary on some of the democratic professions to which we have listened We lay stress on these facts because in truth they are of the essence of the problem and we should be doing no good service to India by glozing them over These difficulties must be faced, not only by Parliament, but by Indians themselves It is impossible to predict whether, or how soon, a new sense of provincial citizenship, combined with the growth of parties representing 38 divergent economic and social interests, may prove strong enough to absorb and obliterate the religious and racial cleavages which thus dominate Indian political life. Meanwhile it must be recognised that, if free play were given to the powerful forces which would be set in motion by an unqualified system of parliamentary government, the consequences would be disastrous to India, and perhaps irreparable In these carcumstances, the successful working of parliamentary government in the Provinces must depend, in a special degree, on the extent to which Parliament can translate the customs of the British constitution into statutory " safeguards " "

It is moved by the Lord Eustace Percy. Lines 17 and 18, to leave out from (" parties") in line 17 to the second (" and ") in line 18 and to insert (" divided by broad issues of policy, rather than by sectional interests; ")

The same is agreed to.

It is moved by the Marquess of Linhthgow Page 12, line 20 to leave out (" either ") and to insert (" any ").

The same is agreed to.

It is moved by Mr. Cocks. Line 23, after (" and ") to insert (" there " is ").

The same is agreed to.

It is moved by the Lord Archbishop of Canterbury. Lines 23 and 24, to leave out (" no mobile body of political opinion") and to insert (" no " considerable body of political opinion which can be described as mobile"). The same is agreed to.

It is moved by the Lord Eustace Percy. Line 38, to leave out ("interests") and to insert ("policies").

The same is agreed to.

Paragraph 20 is again read as amended.

The further consideration of paragraph 20 is postponed.

Paragraph 21 is again read.

It is moved by Mr. Cocks. Page 13, line 32, to leave out (" which ").

The same is agreed to.

It is moved by the Earl Peel. Page 13, line 33, to leave out from ("of") to the end of the line and to insert ("those").

The same is agreed to.

Paragraph 21 is again read as amended.

The further consideration of paragraph 21 is postponed.

Paragraph 22 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 14, line 14, to leave out (" indeed ") and to insert (" very often "). The same is disagreed to.

Paragraph 22 is again read, as amended.

The further consideration of paragraph 22 is postponed.

Paragraph 23 is again postponed.

Paragraph 24 is again read.

It is moved by the Lord Middleton. Page 15, line 20, to leave out (" quiet ") and to insert (" remove ").

The same is agreed to.

Paragraph 24 is again read, as amended.

The further consideration of paragraph 24 is postponed.

Paragraph 25 is read, as amended, and is as follows:-

"25. Lastly, there must be an authority in India, armed with adequate powers, able to hold the scales evenly between conflicting interests and to protect those who have neither the influence nor the ability to protect themselves. Such an authority will be as necessary in the future as experience has proved it to be in the past. Under the new system of Provincial Autonomy, it will be an authority beld, as it were, in reserve; but those upon whom it is conferred must at all times be ready to intervene, if the responsible Ministers and the Legislatures should fail in their duty. This power of intervention must, generally speaking, be vested primarily in the Provincial Governors, but their authority must be closely linked with, and must be focussed in, a similar authority vested in the

"Governor-General, as responsible to the Crown and Parliament for "the peace and tranquillity of India as a whole, and for the protection "of all the weak and helpless among her people. This leads us "naturally to a consideration of the next point in the Indian "constitutional problem—the form and character of the Central "Government."

It is moved by the Lord Archbishop of Canterbury. Line 8, to leave out ("ready to intervene") and to insert ("able to intervene promptly "and effectively").

The same is agreed to.

Paragraph 25 is again read, as amended. The further consideration of paragraph 25 is postponed.

Paragraph 26 is again postponed.

Paragraph 27 is again read.

It is moved by the Marquess of Linlithgow. Page 16, line 20, to leave out (" are ") and to insert (" should be ").

The same is agreed to.

It is moved by the Earl Peel. Page 16, line 42, to leave out ("its form") and to insert ("the form of that legislature").

The same is agreed to.

Paragraph 27 is again read, as amended.

The further consideration of paragraph 27 is postponed,

Paragraph 28 is read, as amended, and is as follows:-

"28. This brings us to the further proposal laid before us, that the The ladian "Constitution Act should also determine the conditions upon which states and an All-India Federation is to be established, including the Indian "States. This is a sense to constitute which may proceed simultants."

"States. This is a separate operation, which may proceed simulta"neously with the introduction of Provincial Automony and the
"reconstitution of the Central Legislature, but which must be carried
"out by different methods and raises quite distinct issues of policy.
"We will leave questions of method to be considered in the body of
"our Report, but the issues of policy must be briefly discussed here."

It is moved by the Earl Peel. To leave out paragraph 28. The amendment, by leave of the Committee, is withdrawn.

Paragraph 28 is again read.

The further consideration of paragraph 28 is postponed.

Paragraph 29 is again read.

It is moved by the Lord Eustace Percy. Page 17, line 15, to leave out ("the").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 17, lines 15 and 16, to leave out ("which they had suggested").

The same is agreed to.

Paragraph 29 is again read, as amended.

The further consideration of paragraph 29 is postponed.

Paragraph 30 is again read.

It is moved by the Marquess of Salisbury. Page 17, line 44, to leave out ("any formal") and to insert ("these").

The same is agreed to.

It is moved by the Lord Archbishop of Canterbury. Page 18, line 23, to leave out ("Englishmen") and to insert ("the people of this country").

The same is agreed to.

It is moved by the Lord Middleton. Page 18, lines 23 to 32, to leave out from ("Englishmen"). in line 23 to ("But") in line 32 and to insert ("From their point of view it is evident enough that Ruling Princes who, "in the past have been the firm friends of British rule, have some-"times felt their friendship tried by decisions of the Government of "India running counter to what they believed to be the interests of their "States and Peoples. Ruling Princes, however, as members of a Federation, "may be expected to give steadfast support to a strong and stable "Central Government, and to become belpful collaborators in policies which "they have sometimes in the past been inclined to criticise or even obstruct"). The same is agreed to.

Paragraph 30 is again read, as amended.

The further consideration of paragraph 30 is postponed.

Paragraph 31 is again read.

It is moved by, The Lord Eustace Percy. Page 19, line 8, to leave out ("somewhat") and to insert ("only slightly").

The same is agreed to.

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed.

Paragraphs 32 to 36 are again postponed.

Paragraph 37 is again read.

It is moved by the Lord Archbishop of Canterbury. Page 20a, lines 44 to 46, to leave out from ("Commission") in line 44 to the end of the sentence. The same is agreed to.

It is moved by the Lord Eustace Percy. Page 20b, line 4, after (" Governor-General") to insert (" much of ").

The same is agreed to.

Paragraph 37 is read, as amended.

The further consideration of paragraph 37 is postponed.

Paragraph 38 is read, as amended, and is as follows:-

"38. Lastly, the line can be drawn within the Central Government itself, in such a way as to reserve the Departments of Defence and Foreign Affairs to the Governor-General, while committing all other central subjects to the care of responsible Ministers, subject to the

5 retention by the Governor-General of the special powers and responsibilities, outside his Reserved Departments, similar to (though not necessarily in all respects identical with) those which we contemplate should be conferred on the Provincial Governors. The nature of the central safeguards which would in that event be necessary will be discussed, like the provincial safeguards, in the body of our Report, but, subject to them, the effect of drawing the line on this point would be to make Indians responsible for policy over the whole field of government. It is, we think, a fair conclusion from the Report of the Statutory Commission that this was the line at which they contemplated that the division of responsibility would ultimately be made. They contemplated an eventual All India Federation They believed that the constitution which they recommended for the Central Government would contain in itself the seeds of growth and development. It was, no doubt, for that reason, and foreseeing the course of that development, that they suggested that the protection of India's frontiers should not, at any rate for a long time to come, be regarded as a function of an Indian Government in relation with an Indian Legislature at all, but as a responsibility to be assumed by the Imperial Government Apart from the difficulties of this suggestion, to which we shall have to return in the body of our Report, it obviously involves a dyarchy of much the same kind as would result from a frank reservation to the Governor-General of the Department of Defence In fact, the reservation of Defence, with the reservation of Foreign Affairs as intimately connected with Defence, is the line of division which corresponds most nearly with the realities of the situation It is also the line of division which, on the whole, creates the least danger of friction As the Statutory Commission pointed out in the passage we have already quoted, dyarchy has not, even in the Provinces, raised any insuperable difficulties" in the inner counsels of the government and the danger of friction in the inner counsels of the Central Government will be even smaller, for the administration of Defence and Foreign Affairs will normally, at any rate, have few contacts with other fields of Central administration under the new constitution. The one real danger of friction, and that a serious one, has in the very large proportion of Central revenues which is, and must continue to be, absorbed by the 40 Army Budget That Budget will be removed from the control of the Central Legisla ure, which will be able to discuss, but not to modify or reject it, and it may be argued with much force that the existence of a standing charge of this magnitude will deprive Ministers chosen from the Legislature of any real responsibility for the financial policy of the 45 Federation.

It is moved by the Lord Eustace Percy. Line 5, to leave out the second ("the")

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 11, to leave out (" on ") and to insert (" at ")

The same is agreed to.

It is moved by the Lord Eustace Percy Line 12, to leave out ("policy") and to insert ("legislation and administration")

The same is agreed to.

It is moved by the Lord Eustace Percy Line 12, to leave out ("government") and to insert ("social and economic policy").

The same is agreed to.

It is anoved by the Earl Peel and Major Cadogan Lines 40 to 45, to leave out from the first ('Budget.") in line 40 to the end of the paragraph Objected to.

Contents (20)

Lord Archhishop of Canterbury. Marquess of Salisbury. Marquess of Linlithgow. Earl of Derby. Earl of Lytton. Earl Peel. Lord Middleton. Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Mr. Davidson. Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy. Sir John Wardlaw-Milne. Earl Winterton.

Not Contents (4)

Lord Snell. Mr. Attlee. Mr. Cocks. Mr. Morgan Jones.

The said amendment is agreed to.

Paragraph 38 is read, as amended.

The further consideration of paragraph 38 is postponed.

## Paragraph 39 is read, as amended, and is as follows :-

"39. It is true that this difficulty is inherent in the facts of the situation. It exists at the present day. Ever since the Act of 1919, the Central Legislature has constantly sought to 'magnify its functions in the reserved field of the Army Budget. The serious friction thus caused would be likely to manifest itself in an even stronger form in the future in a Central Legislature such as was proposed by the Statutory Commission—a Legislature largely representative of Provincial Legislatures, yet denied all effective control over any hranch of Central finance. It is also true that the Statutory Commission's own scheme for a reservation of Defence to the Imperial Parliament would raise the same difficulty in an even more acute form. It is even true that the friction which now exists over Army expenditure could hardly be intensified and might be substantially mitigated by the existence of a Ministry generally responsible to the Legislature for finance. The existence of a large standing charge for Defence does not lessen the financial responsibility of Ministers. Far the greater part of most national budgets are, in effect, unalterable because they are the results of commitments arising out of the past in the field of foreign relations or of social reform. The margin of discretion which is available to Ministers anywhere in increasing or reducing taxation or altering expenditure is usually small and this margin, in India, will be within the control of Ministers, subject to the Governor-General's special responsibility in the financial sphere. Ministers will naturally wish to save money on defence in order that they may spend it on 'nation building' departments under their own charge. But in point of fact the cost of Indian defence, though a large proportion of the Central budget, is, compared with the whole of the resources of India, central and

provincial, considerably less than the cost of defence in some other countries containing a smaller population than that of India. We believe that responsible Indian Ministers will be not less anxious for adequate defence than the Governor-General and will usually, after discussion with him, support his view of what is necessary and will be able to convince their following in the legislature that it is sound. Yet in spite of these weighty considerations, the danger of friction between the Governor-General and the Legislature over the Army Budget undoubtedly furnishes an additional argument against responsibility at the Centre in a purely British India Federation. But that is not the proposition we are now discussing. We have already made it clear that, in such a Federation, we should have felt constrained to draw our line of division at another point, notwithstanding the disadvantages of the alternatives to which we have drawn attention above. What we are now discussing is an All-India Federation, and in regard to the Army Budget, as in regard to the broader issues of the relations between British India and the States, the declaration of the Princes, indicating their willingness to enter an All-India Federation, has introduced a new and, in our judgment, a determining factor. It is reasonable to expect that the presence in the Central Executive and Legislature of representatives of the State Rulers who have always taken so keen an interest in all matters relating to Defence will afford a guarantee that these grave matters will be weighed and considered with a full appreciation of the issues at stake. It is, indeed, one of the main advantages of an All-India Federation that it will enable Parliament to draw the line of division between responsibility and reservation at the point which, on other grounds, is most likely to provide a workable solution."

It is moved by the Marquess of Salisbury. Lines 14 to 23, to leave out from ("finance.") in line 14 to ("Ministers") in line 28.

Objected to.

On Question :--

Contents (7).

Marquess of Salisbury.
Lord Middleton.
Lord Rankeillour.
Major Cadogan.
Sir Reginald Craddock.
Sir Joseph Nall.
Lord Eustace Percy.

Not Contents (18).

Lord Archbishop of Canterbury. Marquess of Linlithgow. Earl of Derby. Earl of Lytton. Earl Peel. Lord Hardinge of Penshurst. Lord Snell, Lord Hutchison of Montrose. Mr. Attlee. Mr. Butler. Sir Austen Chamberlain. Mr. Cocks. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. M . Morgan Jones. Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

It is moved by the Lord Rankeillour. Line 15 to leave ont (" standing"). Objected to.

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On Question -
                                            Not Contents (13)
                                    Lord Archbishop of Canterbury
          Contents (11)
                                    Marquess of Linlithgow.
Marquess of Salisbury.
                                    Earl Peel
Earl of Derby
                                    Mr Attlee
Earl of Lytton
                                    Mr Butler
Lord Middleton
Lord Hardinge of Peashurst
                                    Mr Cocks
                                     Mr Davidson
Lord Rankeillour
Lord Hutchison of Montrose
                                     Mr. Foot
                                     Sir Samuel Hoare.
 Major Cadogan
 Sir Austen Chamberlain.
                                     Mr Morgan Jones.
 Sir Reginald Craddock
                                     Sir Ioseph Nall
 Sir John Wardlaw-Milns
                                     Lord Eustace Percy.
                                     Earl Winterton.
The said amendment is disagreed to.
    It is moved by Sir Samuel Hoare and Mr Butler Line 15 to leave out
   ("does not lessen") and to meet ("circumscribes but by no means
  destroys ")
     It is moved by the Lord Eustace Percy I mes 25 to 29 to leave out
  from (" charge ") in line 25 to the end of line 29 and to insert (" but we ").
     It is moved by the Marquess of Linlithgow Line 48, to leave out
     The same is agreed to
   (" State Rulers ") and to insert ( 'Princes')
     The same is agreed to
 Paragraph 39 14 again read, as amended
  The further consideration of paragraph 39 is postponed
                                              Page 20e, line 3, to leave out
  Paragraph 40 is again read
  It is moved by the Marquess of Salisbury
(" (as the Statutory Commission saw)")
   The same is agreed to
   Paragraph 40 is again read, as amended
    The further consideration of paragraph 40 is postponed
    Paragraph 41 is again postponed.
   Facility and by the Marquess of Salisbury Page 20f, lines 18 and 19, It is movement form if not in substance")
    The same is agreed to "ffect, unant commend ) in line 19 to ("But") in
  to leave out (" mlarge
    It is moved by the Lord Sneu, with past in the 19 to ( But ") in the 19 to 21, to leave out from the past in
                                             ducing therawn.
  Lines 19 to 21, to leave out from ( 'rid discretion
    The amendment, by leave of the Committee, is we walk some
  line 21
    It is moved by Sir Samuel Hoare and Mr Butler Page My v.
  out ( 'party ') and to insert ( 'section of opinion ')
                                                              tion bull to leave
                                                              fact the
    The same is agreed to.
    It is moved by Sir Samuel Hoare and Mr Butler Page 20f, line! budge
                                                                    al and %.
  out (" of any kind must ") and to insert ( 'appears to ")
```

The same is agreed to.

# 8º Octobris 1934

It is moved by Sir Samuel Hoare and Mr. Butler. Page 20f, line 31, to leave out ("at least indicated possibilities") and to insert ("shown their "willingness to go much further than seemed possible at the time of the "Statutory Commission's Report in the direction").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 20f, linea 33 to 35, to leave out from ("Federation") in line 33 to the end of the sentence.

The same is agreed to.

Paragraph 42 is again read, as amended.

The further consideration of paragraph 42 is postponed.

Paragraph 42A is again postponed.

Paragraph 42B is again read.

It is moved by Sir Samuel Hoare on behalf of the Viscount Halifax. Page 20g, line 30, to leave out (" of a people") and to insert (" that are engaged"). The amendment, by leave of the Committee, is withdrawn.

Paragraph 42B is again read.

The further consideration of paragraph 42B is postponed.

Paragraph 43 is again postponed.

Paragraph 44 is again read.

It is moved by the Lord Hardinge of Penshurst. Page 21, line 18, to leave out ("is well enough") and to insert ("will serve").

The same is agreed to.

Paragraph 44 is again read, as amended.

The further consideration of paragraph 44 is postponed.

Paragraph 45 is again postponed.

Paragraph 46 is again read.

It is moved by the Marquess of Linlithgow. Page 22, line 4, to leave out ("a Governor") and to insert ("an Executive").

The same is agreed to.

Paragraph 46 is again read, as postponed.

The further consideration of paragraph 46 is again postponed.

Paragraphs 47 to 51 are again postponed.

Paragraph 52 is again read.

It is moved by the Lord Rankeillour. Page 25, line 20, at the end to insert ("It will be necessary under this plan to make provision for the formal record "of the Governor-General's decisions as having statutory force").

The same is agreed to.

Paragraph 52 is again read, as amended.

The further consideration of paragraph 52 is postponed.

Paragraphs 53 and 54 is again postponed.

Paragraph 55 is again read.

It is moved by the Marquess of Linlithgow. Page 26, line 23, after ("conclusion") to insert (", as we have already indicated").

The same is agreed to.

Paragraph 55 is again read, as amended.

The further consideration of paragraph 55 is postponed.

Paragraph 56 is again postponed.

Paragraph 57 is again read.

It is moved by the Marquess of Linlithgow, the Marquess of Zetland and Mr. Coeks. Page 27, line 17, to leave out ("over").

The same is agreed to.

Paragraph 57 is again read, as amended,

The further consideration of paragraph 57 is postponed.

Paragraphs 58 and 59 are again postponed.

Paragraph 60 is again read.

It is moved by Mr. Attlee. Page 29, lines 5 to 9, to leave out from ("controversy;") in line 5 to the end of the sentence and to insert ("the question has been re-examined by the Secretary of State for India with the "assistance of several of our members and we recommend that the boundaries "should be in accordance with the conclusions thus reached, namely that "there should be added to the Province as defined in the White Paper."

- (a) that portion of the Jeypore Estate which the Orissa Committee of 1932 recommended should be transferred to Orissa;
  - (6) the Parlakimedi and Jalantra Maliahs,
- (c) a small portion of the Parlakimedi Estate, including Parlakimedi Town.")

The same is agreed to.

Paragraph 60 is again read, as amended.

The further consideration of paragraph 60 is postponed.

Paragraphs 61 to 67 are again postponed.

Paragraph 68 is again read. It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 32, lines 18 to 25, to leave out from ("otherwise") in line 18 to the end of the paragraph.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 68 is again read as amended.

The further consideration of paragraph 68 is postponed.

<sup>2</sup> Vide Record No.

Proposal 61, secong paragraph.

Paragraph 71 is again read.

It is moved by the Lord Middleton. Page 33, line 37, to leave out ("public").

The same is agreed to.

Paragraph 71 is again read, as amended.

The further consideration of paragraph 71 is postponed.

Paragraph 72 is again read.

It is moved by Sir Samuel Hoare on behalf of the Viscount Halifax. Page 34, line 14, to leave out (" readily admit ") and to insert (" consider ").

The same is agreed to.

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Paragraph 72 is again read, as amended.

The further consideration of paragraph 72 is postponed.

Paragraph 73 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 34, lines 28 and 29, to leave out from ("Governor") in line 28 to ("consult") in line 29, and to insert ("should as a general rule").

The same is disagreed to.

It is moved by the Lord Eustace Percy. Page 34, lines 34 and 35, to leave out "Undian constitutional problem.", and to insert "evolution of the "Indian Constitution").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 34, line 35, to leave out ("in the case of India").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 34, line 36, to leave out the second (" the ") and to insert (" its ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 34, line 37, to leave out (" of that evolution").

The same is agreed to.

Paragraph 73 is again read, as amended.

The further consideration of paragraph 73 is again postponed.

Paragraph 74 and 75 are again postponed.

Paragraph 76 is again read

It is moved by Mr Morgan Jones, Mr Attlee, Mr Cocks, and the Lord Snell. Page 35, lines 36 to 42, to leave out from ("Order") in line 36 to ("justification") in line 42, and to insert ("We accept the first of these "suggestions as we feel that in view of the importance of doing nothing to "weaken the sense of responsibility in Ministers and Legislatures the powers of intervention given to the Governor under this sub-section should be more "strictly defined and should not be drawn in terms which would enable him to step in and overrule his ministers in a very wide field We see, however, "no")

Objected to

On Question :--

### Contents (5)

Lord Snell Mr Attlee Mr Cocks Mr. Foot Mr Morgan Jones.

#### Not Contents (19)

Lord Archbishop of Canterbury. Marquess of Salisbury Marquess of Zetland Marquess of Linlithgow. Earl of Derby Earl of Lytton Earl Peel Lord Middleton Lord Hardinge of Penshurst. Lord Rankeillour Mr Butler Major Cadogan Sir Austen Chamberlain Sir Reginald Craddock Mr Davidson Sir Samuel Hoare Lord Eustace Percy Sir John Wardlaw-Milne Earl Winterton

The said amendment is disagreed to

Paragraph. 7A is again read, as amended.

The further consideration of paragraph 76 is postponed.

Paragraphs 77 and 78 are again postponed

Paragraph 79 is read, as amended, and is as follows ---

"79 With regard to (h), it is apparent that the close connection between the Governor's responsibilities within the administered districts of his Province and the responsibilities of the Governor-General exercised through the person of the Governor in his other capacity as Agent-General for the Tribal Tracts on the borders of the Province makes a provision of this kind necessary. With regard to (i), we agree that this special responsibility is necessary in the case of Sind, in view of the vital influence upon the future finances of the Province of the successful operation of the Sukkur irrigation scheme and of the large financial interest which the Central Government has in it

"But in our opinion, the two proposals in the White Paper which have reference to special circumstances in particular Provinces do not exhaust the requirements of this kind. It has come to our notice that, under the system of joint administration of the Districts known as the Berars with the Central Provinces which has obtained for many years,

and which as we have already pointed out! will continue under the new Constitution, there has been a tendency on the part of the inhabitants of the Berars and of their representatives in the Legislature, to criticise 19 the apportionment between the two areas forming the joint Province as favouring unduly the Central Provinces area to the disadvantage of the Berars We express no option as to the justification for such criticisms, but it is evident that, under a system of responsible government, the scope for grievances on this account may well be increased. We think, therefore, that the Governor of the joint Province should bave imposed upon him a special responsibility and should thus be enabled to counteract any proposals of his Ministry which be regards as likely to give justifiable ground for complaint on this account. Without attempting to usurp the functions of the draftsman, we suggest that the purpose we have in view would be adequately expressed in defining the special responsibility in some such terms as

i + Berars and the \*The expenditure in the Berars of a reasonable share of the revenues raised for the joint purposes of +8 Central Provinces '

"We think, moreover, that the Governor m appropriately be directed in his Instrument of Instructions to const atte some impartial body to advise him on the principles which should be followed in the distribution of revenues if he is not satisfied that past practice affords an adequate guide for his Ministers and himself for the discharge of the special responsibility imposed upon him in respect of them

We also think that the special position of the Berars should be recognised by requiring the Governor, through his Instrument of Instructions, to interpret his special responsibility for "the protection of the rights of any Indian State" as involving inter also an obligation upon him, in the administration of the Berars, to have due regard to the commercial and economic interests of the State of Hyderabad"

It is moved by the Marquess of Linlithgow. Line 19, after ('appor-"tionment") to insert (" of expenditure')

The same is agreed to.

Paragraph 79 is again read as amended The further consideration of paragraph 79 is postponed

Paragraph 79A is read, as amended, and is as follows -

"79A We think it desirable to make some reference to the suggestion Aspecial responsibility that among the special responsibilities of the Governor should be included the safeguarding of the financial stability and credit of the Province financial following the analogy of the space of the following the analogy of the special responsibility of this kind which, as Province not we shall explain later, we recommend should be imposed on the Governor-General in relation to the Federation 1. A similar proposal was examined and rejected by the Statutory Commission on the ground that a power of intervention over so wide a field would hinder the growth of responsi-9 bility We agree with this view The other special responsibilities which 10 we recommend will give the Governor adequate powers in relation to 11 supply and taxation to ensure that their due discharge is not impeded 12 by lack of financial resources, we refer specially to one aspect of this 13 matter below But the addition of a special financial responsibility would increase enormously the range of his special powers. There is no

real parallel with the situation at the Centre where there is paramount

<sup>1</sup> Infra, paras 165 and 167 Report, Vol II, para 189.

<sup>3</sup> Infra, paras 303-307, 99 and 103

opportunity of demonstrating more conclusively their fitness to govern themselves than their action in this sphere. From one point of view indeed the transfer of these functions to an Indian Minister may be in the interest of the police themselves, whom it will no longer be possible to attack, as they have been attacked in the past, as agents of oppression acting on behalf of an alien power; but we prefer to base our conclusion upon the broader grounds indicated above. Nevertheless, it must not be supposed that we are blind to the risks implicit in the course which we advocate; for these, in our opinion, cannot be regarded lightly or as the phantoms of a reactionary imagination. The qualities most essential in a police force, discipline, impartiality, and confidence in its officers, are precisely those which would be most quickly undermined by any suspicion of political influence or pressure exercised from above; and it would indeed be disastrous if in any Province the police force, to whose constancy and discipline in most difficult circumstances India owes a debt not easily to be repaid, were to be sacrificed to the exigencies of a party or to appease the political supporters of a Minister. If, therefore, the transfer is to be made, as we think it should, it is essential that the Force should be protected so far as possible against these risks, and in the following paragraphs we make recommendations designed to secure this protection.

It is moved by the Lord Eustaco Percy. Line 2, after (" for ") to insert (" public ").

The same is agreed to.

Paragraph 87 is again read, as amended. The further consideration of paragraph 87 is postponed.

Paragraph 88 is read, as amended, and is as follows:-

"88. First, there are the proposals already made in the White Paper. The Governor is to have a special responsibility for 'the prevention of any grave menace to the peace or tranquillity of the Province, or any part thereof. The effect of this, as of all other special responsibilities, is to enable the Governor, if he thinks that the due discharge of his special responsibility so requires, to reject any proposals of his Ministers, or himself to initiate action which his Ministers decline to take. Further, there flows from this special responsibility, not only the right to overrule his Ministers, but also special powers—legislative and financial—to enable him to carry into execution any course of action which requires legislative provision or the provision of supply. If, therefore, the Governor should be of opinion that the action or inaction of Ministers is jeopardising the peace or tranquillity of the Province, it will be his duty to take action to meet the situation. It the situation is one requiring immediate action, he will issue any executive order which he may consider necessary. If the situation is one which cannot be dealt with by an isolated executive order-if the Minister in charge of the Department appears unable to administer his charge on lines which the Governor regards as consistent with the due discharge of his special responsibilitythe Governor will dismiss and replace the Minister (and, if necessary, the Ministers as a body, with or without resort to a dissolution of the Legislature). If he fails to find an alternative Government capable; of administering Law and Order on lines consistent with the discharge of his special responsibility, he will be obliged to declare a breakdown of the constitution, and to assume to himself all such powers as he judges requisite to retrieve the situation. We are not contemplating such a course of events as probable; but, if it occurs, provision is made to meet it."

It is moved by the Marquess of Zetland. Lines 20 and 22, to leave out the brackets, and to leave out the second (" and ") in line 20 and to insert (" or ").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 27 to after (" occurs,") to insert (" we point out that").

The same is agreed to.

Paragraph 88 is again read, as amended.

The further consideration of paragraph 88 is postponed.

Paragraph 89 is read, as amended, and is as follows:-

"89. We turn now to our own further recommendations for the The Police specific protection of the Police Force itself. Of course, the due discharge of his special responsibility for peace and tranquillity will, in itself, entitle the Governor to intervene immediately if, by reason of ill-timed measures of economy or the attempted exertion of political influence on the Police Force or from any other cause, the morale or the efficiency of that Force is endangered. Further, the Governor has another special responsibility: it is his duty to secure to the members of the Police, as of other Public Services, any rights provided for them by the Constitution Act and to safeguard their legitimate interests. These are important 11 safeguards, but there is a special factor in police administration which requires to be specially protected. We refer to the body of Regulations known as the "Police Rules", promulgated from time to time under powers given by the various Police Acts. A large number of the Rules deal with matters of quite minor importance and are constantly amended, in practice, on the responsibility of the Inspector-General of Police himself. It would be unnecessary to require the Governor's consent to every amendment of this kind. But the subject matter of some of the Rules is so vital to the well-being of the Police Force that they ought not, in our opinion, to be amended without the Governor's consent; and the same consideration applies a fortiori to the Acts themselves, which 22 form the statutory basis of the Rules. Our aim should be to ensure that the internal organisation and discipline of the Police continue to be regulated by the Inspector-General, and to protect both him and the Ministers themselves from political pressure in this vital field. We, therefore, recommend that the consent of the Governor, given in his discretion, should be required to any legislation which would amend or repeal the General Police Act in force in the Province or any other Police Acts (euch as the Bombay City Police Act, the Calcutta Police Act, the Madras City Police Act, and Acts regulating Military Police in Provinces where such forces exist). We further recommend that any requirement in any of these Acts that Rules made under them shall be made or approved by the local Government is to be construed as involving the consent of the Governor, given in his discretion, to the making or amendment of any Rules, which, in his opinion, relate to, or 38 affect, the organisation or discipline of the Police."

It is moved by the Marquess of Linlithgow. Line 11, to leave out (" a "special factor") and to insert ("one element").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 22, to leave out ("should " be") and to insert (" is").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 26, after the first (" the ") to insert (" prior ").

The same is agreed to.

(C 14542)

It is moved by the Lord Rankeillour. Line 36, at the end to insert ("It "will of course be open to the Governor-General in his discretion to give "directions to the Provincial Governor as to the making, maintenance," abrogation, of amendment of all such rules.").

The same is agreed to.

Paragraph 89 is again read, as amended.

The further consideration of paragraph 89 is postponed.

Paragraphs 90 and 91 are again postponed.

Paragraph 92 is read, as amended, and is as follows:-

"92. But, even so, the circumstances set out above render it imperative to arm the Governor with powers which will ensure that the measures taken to deal with terrorism and other activities of revolutionary conspirators are not less efficient and unhesitating than they have been in the past. We are, indeed, particularly anxious not to absolve Indian Ministers, in Bengal or elsewhere, from the responsibility for combating terrorism, and we think that such executive duty should be clearly laid upon them. But the issues at stake are so important, and the consequences of inaction, or even of half-hearted action, for even a short period of time, may be so disastrous, that the Governor of any Province must, ia our opinion, have a special power over and above his special responsibility for the prevention of any grave menace to peace and tranquillity," to take into his own hands the discharge of this duty, even from the outset of the new Constitution. This purpose would not be adequately served by placing the Special Branch of the Provincial Police alone in the personal charge of the Governor. That course has been urged upon us, but we are convinced that it falls short of what is required. Instead, we recommend that the Constitution Act should specifically empower the Governor, at his discretion, if he regards the peace and tranquillity of the Province as endangered by the activities, overt or secret, of persons committing or conspiring to commit crimes of violence intended to overthrow the Government by law established, and if he considers that the situation cannot otherwise be effectively handled, to assume charge, to such extent as he may judge requisite, of any branch of the government which he thinks it necessary to employ to combat such activities, or if necessary to create new machinery for the purpose. If the Governor exercises this power, he should be further authorised, at his discretion, to appoint an official as a temporary member of the Legislature, to act as his mouthpiece in that body, and any official so appointed should have the same powers and rights, other than the right to vote, as an elected member. The powers which we have just described would be discretionary powers, and the Governor would, therefore, be subject to the superintendence and control of the Governor-General, and ultimately of the Secretary of State, in all matters connected with them. We should add that if conditions in Bengal at the time of the inauguration of Provincial Autonomy have not materially improved, it would, in our judgment, be essential that the Governor of that Province should exercise the powers we have just described forthwith and should be directed to do so in his Instrument of Instructions, which, in this as in other respects, would remain in force until amended with the consent of Parliament."

It is moved by the Marquess of Linlithgow. Line 1, to leave out (" even so") and to insert (" in addition").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Lines 26 to 31, to leave out from (" purpose.") in line 26 to (" The ") in line 31... Objected to.

On Question :---

Contents (4).

Lord Snell. Mr. Attlee.

Mr. Cocks.

Mr. Morgan Jones,

Not Contents (19).

Lord Archbishop of Canterbury.

Marquess of Salisbury. Marquess of Zetland.

Marquess of Linlithgow.

Earl of Derby.

Earl Peel.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock.

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare.

Lord Eustace Percy.

Sir John Wardlaw-Milne,

Earl Winterton,

The said amendment is disagreed to.

It is moved by the Lord Rankeillour. Line 36, after ("improved") to insert (" or if similar conditions should unfortunately have arisen in any other province ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Rankeillour. Line 40, at the end, to insert ("We think further that like powers should be exercisable by the Governor" of the North-West Frontier Province if in his opinion the security of the Frontier is endangered ").

The amendment by leave of the Committee is withdrawn

Paragraph 92 is again read, as amended.

The further consideration of paragraph 92 is postponed.

Paragraph 92A is again read, as amended, and is as follows:-

" 92A. We have only to add that we have considered in this con-"nexion a proposal made to us that the Intelligence Departments Bureau "-or at all events the Special Branch where such exists-of the pro-

"vincial Police Forces should be placed under the control of the "Governor-General, who should utilise them, through the agency of "the Governor, as local offshoots of the Central Intelligence Bureau.

"We agree with the ideas underlying this proposal to this extent, "that it is essential that the close touch which has hitherto obtained "between the Intelligence Departments of the Provinces and the

"Central Intelligence Bureau should continue. But to place the "Provincial Intelligence Departments under the departmental control "of the Central Intelligence Bureau would, we think, be undesirable,

"as tending to break up the organic unity of the provincial Police 14 "Force. We recommend, therefore, that the Central Bureau should,

"under the new Constitution, be assigned to one of the Governor-"General's Reserved Departments as part of its normal activities,

"and that the change in the form of government, whether at the "Centre or in the Provinces, should not involve any change in the "relationship which at present exists between the Central Bureau and the provincial Intelligence Departments. Should the Governor-"General find that the information at his disposal, whether received through the channel of the Governors or from the provincial Intelligence Departments through the Central Intelligence Bureau, is "inadequate, he will, in virtue of recommendations which we make "later" possess complete authority to secure through the Governor the correction of any deficiencies, and indeed to point out to the Governor, and require him to set right, any shortcomings which he may have noticed in the organisation or activities of the provincial Intelligence Branch.

It is moved by the Lord Archbishop of Canterbury. Lines 14 to 17, to leave out from ("therefore") in line 14 to ("that") in line 17.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 92A is again read.

The further consideration of paragraph 92A is postponed.

Paragraph 93 is again postponed.

Paragraph 94 is again read.

It is moved by the Lord Eustace Percy. Page 45, line 15, to leave out ("; and ") and to insert a full stop.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 16, to leave out (" will ") and to insert (" must continue to "). The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 17, to leave out (" time. No ") and to insert (" time, though no ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 18, to leave out (" a different ") and to insert (" the new ").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 45, line 25, to leave out ("Nevertheless") and to insert ("Beyond this however").

The same is agreed to.

Paragraph 94 is again read, as amended.

The further consideration of paragraph 94 is postponed.

Paragraph 95 is again postponed.

Paragraph 96 is again read.

It is moved by Sir John Wardlaw-Milne. Page 46, line 46, to leave out ("we") and to insert ("with duties of a wider and more responsible character. "We").

The same is agreed to.

Paragraph 96 is again read, as amended.

The further consideration of paragraph 96 is postponed.

Paragraph 97 is again read.

It is moved by Sir John Wardlaw-Milne and the Lord Middleton. Page 47, line 20, to leave ont (" elsewhere ").

The same is agreed to.

Paragraph 97 is again read, as amended,

The further consideration of paragraph 97 is postponed.

Paragraph 98 is again read.

It is moved by the Lord Eustace Percy. Page 47, lines 22 to 24, to leave out from (" that ") in line 22 to (" in ") in line 24 and to insert (" purely executive action may not always suffice for the due discharge of the "Governor's special responsibilities").

The same is agreed to.

Paragraph 98 is again read as amended.

The further consideration of paragraph 98 is postponed.

Paragraph 99 is again postponed.

Paragraph 101 is read, as amended, and is as follows:-

101. We observe that the White Paper proposes that whereas Modification temporary Ordinances, if extended beyond six months, are to be laid before Parliament, there is no similar proposal in the case of Governor's suggested. Acts. We consider that all Governor's Acts should be laid before Farliament and that the Governor before legislating should have the concurrence of the Governor-General.

It is moved by the Lord Archbishop of Canterbury. Line 5, after ("legislating") to insert ("or notifying his intention to legislate"). The same is agreed to.

Paragraph 101 is again read, as amended.

The luriher consideration of paragraph 101 is postponed.

Paragraph 102 is read, as amended, and is as follows:-

102. The next special power which is it is proposed to give the Onlinences Governor is the power (for use in emergencies) of issuing temporary Ordinances, to be valid for not more than six months in the first instance, but renewable once for a similar period. At the present time, this power is only exercisable whether for a single Province or for the whole of British India by the Governor-General; but we cannot doubt that in an autonomous Province it should in future be vested in the Governor himself. It was urged by the British India Delegation that the power 9 should continue to be vested in the Governor-General; and we agree 10 that his concurrence should be obtained.

It is moved by the Marquess of Zetland. Line 9, after ("and ") to insert ("although we are unable to accept this proposal in its entirety").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Lines 9 and 10, to leave out from ("agree") in line 9 to ("should") in line 10, and to insert ("that all temporary ordinances if extended beyond "six months should be laid before Parliament and that the concurrence of the "Governor-General").

The same is agreed to,

(C 14542)

Paragraph 102 is again read, as amended.

The further consideration of paragraph 102 is postponed.

Paragraph 103 and 104 are again postponed.

Paragraph 105 is again read.

It is moved by Sir Reginald Craddock. Page 51, line 43, after ("require") to insert ("for example the nomination of a Legislature to function until the "ordinary Constitution is restored.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 105 is again read, as amended.

The further consideration of paragraph 105 is postponed.

Paragraph 106 is again read.

It is moved by Sir Austen Chamberlain. Page 51, line 47, after ("Governor-General") to insert ("acting in his discretion").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 52, lines 2 and 3, to leave out from ("and") to the end of the paragraph and to insert ("its importance, particularly in the event, or the danger, of a complete or partial breakdown in the working of the Constitution in a Province, has already been indicated in the first section of our Report, where we speak of the interaction of the "Governor-General's and the Governors' special powers and responsibilities. "We shall have to consider another aspect of this subject in a later part of our Report, It is unnecessary for us to comment on it further here.") The same is agreed to.

Paragraph 106 is again read, as amended.

The further consideration of paragraph 106 is postponed.

Paragraph 107 is again read, as amended, and is as follows:-

"M? As the preceding paragraphs we have approved the proposal of the White Paper to entrust certain wide discretionary powers to the Governor, and we have recommended that, in certain respects, those powers should be strengthened and extended. We should not wish to pass from this subject without some general review of the broad considerations which have led us to these conclusions. The dominant consideration is the one which we have already emphasised: the vital importance in India of a strong Executive. It has seemed to us in the course of our discussions with the British India delegates that in their arxiety to increase the prerogatives of the Legislature, they have been apt to overlook the functions of the Executive, an attitude not perhaps surprising in those to whom at the present time the Legislature offers the main field of political activity. But if the responsibility for government is henceforward to be borne by Indians themselves they will do well to remember that to magnify the Legislature at the expense of the Executive is to diminish the authority of the latter and to weaken the sense of responsibility of both. The fonction of the executive is to govern and to administer; that of the Legislature to vote supply, to criticize, to educate public opinion, and to legislate; and great mischief may result from attempts by the latter to invade the executive sphere. The belief that parliamentary government is incompatible with a strong

Supra, paragraph 40.
 Infra, paragraphs 220-222. See also supra, paragraph 92A.

Executive is no doubt responsible for the distrust with which parliamentary institutions have come to be regarded in many parts of the world. The United Kingdom affords a sufficient proof that a strong Executive may co-exist even with an omnipotent Parliament if the necessary conditions are present; and the strength of the Executive in this country may, we think, be attributed with not more justice to the support of a disciplined party than to the inveterate and cherished tradition of Parliament that 29 the prerogatives of the Legislature are not jealously or factiously asserted in such a way as to prevent the King's Government from being carried on. 'His Majesty's Opposition' is not an idle phrase, but embodies a constitutional doctrine of great significance."

It is moved by The Marquess of Linlithgow, Line 29, after (" not ") to insert (" to be ").

The same is agreed to.

Paragraph 107 is again read, as amended.

The further consideration of paragraph 107 is postponed.

Paragraph 108 is again read, and is as follows:-

"108. It is a commonplace that this tradition is as yet unknown Difficulties in India and that Indian Ministries have not hitherto been able to rely greated by on the support of a disciplined party. The Statutory Commission, representation in surveying the work of the existing Provincial Constitution, observed in Minutes. that Governors, in choosing their Ministers have had an exceptionally 8 difficult task. It could seldom be predicted what following a Minister would have in the Legislature, quite apart from the fact that his acceptance of office was often followed, owing to personal rivalries, by the detachment of some of his previous adherents. It has been urged upon us by the members of the British-India Delegation that these difficulties will tend to disappear under responsible government. We hope that it will be so, and neither we nor the Statutory Commission would have recommended that the experiment should be made if we were not satisfied that under no other system can Indians come to appreciate the value of the tradition of which we have spoken. But it must be remembered that in two respects the difficulties of Provincial Ministries in the future may be greater than in the past. In the first place, they will not in future be able to rely upon the official bloc which, in the words of the Statutory Commission 'has helped to decrease the instability of the balance of existing groups in the Legislature and has made the tenure of office of Ministers far less precarious.' In the second place, each 22 Ministry will, as we have already pointed out, be a composite one. 23 The Legislatures will be based on a system of communal representation, and the Governor will be directed by his Instrument of Instructions to include in his Ministry, so far as possible, members of important minority communities. A Ministry thus formed must tend to be the representative, not, as in the United Kingdom, of a single majority 28 Party or even of a coalition of Parties, but of minorities as such. More-29 over, the system of communal representation may also tend to render less effective the weapon to which, under most parliamentary constitutions, the executive resorts when confronted by an obstructive legislature, the weapon of dissolution; for under such a system even a general election may well produce a legislature with the same complexion as its predecessor."

It is moved by the Marquess of Linlithgow. Line 6, after ("task."), to insert ("and that ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Mr. Atthee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Line 22, to leave out (" will ") and to insert (" may "). The same is agreed to.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Lines 23 to 29, to leave out from the beginning of line 23 to ("Moreover") in lines 28 and 29.

The same is disagreed to.

It is moved by the Marquess of Linlithgow. Line 28, after ("but") to insert ("also").

The same is agreed to.

Paragraph 108 is again read, as amended. The further consideration of paragraph 108 is postponed.

Paragraphs 109 and 110 are again postponed.

Ordered that the Committee be adjourned till to-morrow at Three o'clock.

#### Die Martis 9° Octobris 1934

#### Present:

LORD ARCHEISHOP OF CANTERBURY. MR. ATTLEE. MARQUESS OF ZETLAND.

MARQUESS OF LINLITHGOW.

EARL OF DERBY. EARL OF LYTTON.

EARL PEEL. LORD MIDDLETON.

LORD HARDINGE OF PENSHORST.

LORD SNELL.

LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

MR. DAVIDSON. MR. FOOT.

SIR SAMUEL HOARE. Mr. Morgan Jones. SIR JOSEPH NALL.

LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

## THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read. The Proceedings of yesterday are read.

Paragraph 116 is again read.

It is moved by the Lord Eustace Percy. Page 57, to leave out paragraph 116.

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linlithgow. Page 57, lines 13 to 15, to leave out from ("government") in line 13 to ("postulates") in line 15.

The same is agreed to.

it is moved by the Marquess of Linlithgow. Page 57, lines 16 to 18, to leave out from ("create") in line 16 to the end of the sentence.

The same is agreed to.

Paragraph 116 is again read, as amended.

The further consideration of paragraph 116 is postponed.

Paragraph 117 is again postponed.

Paragraph 116 is again read, and is as follows:-

"118. We are of opinion that Legislative Councils should also be s "established in Bombay and Madras, where the conditions are sub-uggested by stantially the same as in Bengal and the United Provinces. We see Bombay "no reason for giving an exceptional power to the Provincial and Madrae." Legislatures to amend the Constitution in this one respect, and we "think that the abolition or creation of a Legislative Council should, "instead, be included among the questions on which, as we shall "later propose in our Report," a Provincial Legislature shall have a

"special right to present an address to the Governor for submission 10 "to His Majesty and to Parliament. Apart from these alterations we

"concur in the proposals of the White Paper, subject to certain

### \* Infra, paras. 358 and 357.

All amendments are to the Draft Report (see this volume, parss. 1-42B, pp. 470-491; and parss. 43-453, pp. 64-254) and NOT to the Report as published.

A Key is attached (see p. 627 et seg.), showing on which pages of the Proceedings amendments to each paragraph can be found.

"small changes in the composition of the Legislative Councils in "Bengal, the United Provinces, and Bihar; and our recommendations 13" for all five Councils are set out in an Appendix to this part of our "Report."

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Lines 1 to 3, to leave out from the beginning of the paragraph to ("We") in line 3.

Objected to.

On Question :-

Contents (4).

Lord Snell. Mr. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (18).

Lord Archbishop of Canterbury. Marquess of Zetland. Marquess of Linlithgow. Earl of Derby. Lord Middleton. Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock, Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy. Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Line 1, after ("that") to insert ("subject to a request to "that effect being received from the Provincial legislatures of Bombay "or Madras").

The same is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, and the Lord Snell. Line 2, to leave out ("Bombay and Madras") and to insert ("those Provinces"). The same is disagreed to.

It is moved by the Lord Rankeillour. Lines 10 to 13, to leave out from ("Parliament") in line 10 to ("our") in line 13.

The same is agreed to.

Paragraph 118 is again read, as amended. The further consideration of paragraph 118 is postponed.

Paragraphs 119 and 120 are again postponed.

Paragraph 121 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 59, lines 28 and 29 to leave out from ("minority;") in line 28 to ("we") in line 29 and to insert ("and we understand that recently there has been a growing tendency in "some influential sections of the Hindu community to attack the foundation" of the Award. Nevertheless, it is clear to us that there is among almost all

<sup>&</sup>lt;sup>3</sup> Infra, page 73.

"the communities in India (not excepting the Hindu) a very considerable degree of acquiescence in the Award in the absence of any solution agreed between the communities; in fact,").

The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 59, lines 29 and 30, to leave out from ("acceptance") in line 29 to the end of the sentence.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 121 is again read as amended.

The further consideration of paragraph 121 is postponed.

Paragraph 121A is again read and is as follows:-

"121A. We have given careful consideration in this connexion to the Special number of seats to be allotted to special interests and in particular to representations submitted to us in favour of a substantial increase in the number of seats to be allotted to Labour in the new Provincial Legislatures. Any material alteration in the number of seats allotted to special interests would inevitably involve a reopening of the Communal Award, and we 7 have indicated above the objections to this. But we are in any case of opinion that the representation proposed in the White Paper for landlords, commerce and industry, universities and labour, may be regarded as striking a just balance between the claims of the various interests, and as affording an adequate representation for them. We observe in particular that the representation of labour has been increased from 9 seats in the present Provincial Legislative Councils to a total of 38, the present marked difference between the representation of labour and of commerce and industry being thus very substantially reduced. Having regard to this, to the large number of seats set aside for the Depressed Classes (whose representatives will to some extent at any rate represent labour interests), and to the extension of the franchise, which will bring on the electoral roll large numbers of the poorer and of the labouring classes, we are of opinion that the position of labour, the importance of which we fully recognise, is adequately safeguarded under the proposals 22 embodied in the White Paper."

It is moved by the Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones. Lines 7 to 22, to leave out from ("this.") in line 7 to the end of the paragraph and to insert ("We notice, however, that it is proposed in the White Paper to allot 56 of these special seats to Commerce and "Industry, 37 to Landholders, and 38 to Labour, a total of 131, and bearing in mind the view of the Indian Franchise Committee that 'if" special constituencies are retained, it should be recognised that Labour "has not less claim to representation than employers' we are of the opinion that at least half of these seats should be given to Labour. We "therefore recommend that the representation of Labour should be increased to 66 seats, which would still leave 65 special seats for Land" holders and Commerce and Industry.")

Objected to.

On Question:-

Contents (4).

Lord Snell. Mr. Attlee. Mr. Cocks. Mr. Morgan Jones. Not Contents (19).

Lord Archbishop of Canterbury.
Marquess of Zetland.
Marquess of Linlithgow.
Earl of Derby.
Earl Peel.
Lord Middleton.

Contents (4)-conid.

Not Contents (19)—contd.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose,

Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock.

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare.

Sir Joseph Nall.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

The said amendment is disagreed to.

Paragraph 121A is again read.

The further consideration of paragraph 121A is postponed.

Paragraph 122 is read, as amended, and is as follows:-

nposition of and ambers, "122. The Communal Award did not extend to the Legislative Council of any Province. The composition of these Councils which is set out in the White Paper is however based upon the same principles as the Communal Award; but, since the Legislative Councils are much smaller bodies than the Legislative Assemblies and it would be impossible therefore to provide in them for the exact equivalent of all the interests represented in the Lower House, it is proposed to include a certain number of seats to be filled by nomination to be filled by the Governor at his discretion and accordingly available for the purpose of redressing any possible inequality. We think that this is a reasonable arrangement, 10 and we have included provision for it in the detailed recommendations which are set out in the Appendix above referred to. We think that the Legislative Council should not be dissoluble, but that one-third of its members should retire at fixed intervals.

It is moved by the Marquess of Zetland. Line 8 to leave out (" to be" filled ").

The same is agreed to.

It is moved by Mr. Isaac Foot. Line 10, after ("inequality")  $t^{\rho}$  insert (" or to secure some representation to women in the Upper House").

It is moved by Mr. Cocks as an amendment to the above amendment. After ("women") to insert ("and for labour").

Objected to.

On Question :--

Contents (6).

Lord Archbishop of Canterbury.

Lord Snell.

Mr. Attlee. Mr. Cocks.

Mr. Foot.

Mr. Morgan Jones.

Not Contents (16).

Marquess of Zetland.

Marquess of Linlithgow.

Earl of Derby.

Earl Peel.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Contents (6)-conid.

Not Contents (16)—contd.

Major Cadogan. Sir Reginald Craddock. Mr. Davidson. Sir Samuel Hoare. Sir Joseph Nall. Lord Eustace Percy. Sir John Wardlaw-Milne.

Sir Austen Chamberlain did not vote.

The said amendment is disagreed to.

The original amendment is again moved.

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Line 14, at the end to insert (" of three years ").

The same is agreed to.

Paragraph 122 is again read, as amended.

The further consideration of paragraph 122 is postponed.

Paragraph 123 is again read.

It is moved by the Marquess of Linlithgow. Page 60, line 37, after (" Province ") to insert (" except the North-West Frontier Province "). The same is agreed to.

Paragraph 123 is again read, as amended.

The further consideration of paragraph 123 is postponed.

Paragraph 124 is again read.

It is moved by the Lord Middleton. Page 61, line 12, to leave out ("public") The same is agreed to.

Paragraph 124 is again read, as amended.

The further consideration of paragraph 124 is postponed.

Paragraph 125 is read, as amended, and is as follows:-

"125. The proposals of His Majesty's Government for the Provincial The proposal Franchise are set out in Appendix V to the White Paper, and are in the White Paper essentially based, with certain modifications of minor importance only. save in the case of the women's franchise, on the Report of the Franchise Committee. We are informed that the proposals have the general support of the Government of India and of the Provincial Governments. The basis of the franchise proposed is essentially, as at present, a property qualification (that is to say, payment of land revenue or of rent in towns

9 tenancy, or assessment to income tax), to which are added an educational 10 qualification and certain special qualifications designed to secure an adequate representation of women and to enfranchise approximately 10 per cent of the Depressed Classes (called in Appendix V Scheduled

13 Castes) by the enfranchisement of retired, pensioned and discharged officers, non-commissioned officers and men of His Majesty's Regular

15 Forces, and by the provision of a special electorate for the seats reserved for special interests, such as labour, landlords and commerce. The individual qualifications vary according to the circumstances of the different Provinces: but the general effect of the proposals is to enfranchise approximately the same classes and categories of the population in all Provinces alike."

It is moved by the Lord Eustace Percy. Line 9, to leave out (" to which are added ") in line 9 and to insert (" supplemented by "), and to leave out (" and ") in line 10 and to insert (", by ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Linlithgow. Line 9, to leave out ("to which") and to insert ("to this").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 13, to leave out ("by the enfranchisement of") and to insert ("; it is also proposed to "enfranchise").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Line 15, to leave out ("by the provision of ") and to insert ("to provide").

The same is agreed to.

It is moved by the Marquess of Zetland. Line 15, to leave out '(" a ") and to leave out (" electorate ") and to insert (" electorates ").

The same is agreed to.

Paragraph 125 is again read, as amended.

The further consideration of paragraph 125 is postponed.

Paragraphs 126 and 127 are again postponed.

Paragraph 128 is again read.

It is moved by the Lord Middleton. Page 62, line 29, to leave out ("public"), The same is agreed to.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 62, line 35, to leave out ("method of election to the seats reserved for") and to insert ("nature of the constituencies which are to return").

The same is agreed to.

It is moved by Mr. Butler and Sir Samuel Hoare. Page 62, line 39, at the end, to insert ("We would at this stage record, however, our acceptance of "the proposal that the seats allocated to Labour should be allocated in part "to Trade Unions and in part to special Labour constituencies. As regards "the women's seats, we are provisionally, subject to consideration of special local difficulties, in favour of the reservation of seats in constituencies formed for the purpose and containing both men and women. We are "inclined to think it desirable that those constituencies should be both urban and rural, and we should see no objection to their area being varied by rotation should this prove to be desirable and practicable.")

The same is agreed to.

Paragraph 128 is again read, as amended.

The further consideration of paragraph 128 is postponed.

Paragraph 129 is read, as amended, and is as follows:-

ms for stem of "129. We have carefully examined a suggestion to substitute for direct election in territorial constituencies an indirect system of election by means of local groups. At first sight an arrangement of this nature would appear to have the advantage of widening the basis of the franchise, of giving an equal vote at the primary stage to every adult, of facilitating voting by the primary elector, and of securing a more experienced and intelligent secondary elector; and having

regard to these considerations, we felt it our duty, despite the fact that discussion and experiment in India had led the Indian Franchise Committee to reject it, again to consider its practicability. The effect of the evidence given before us by witnesses of great experience has bowever been to show that, superficially attractive as a system of group election may be, the objections to it in existing conditions in India are decisive We have been especially impressed by the administrative difficulties involved in constituting electoral groups, given the existence of caste and the reality of the communal problem and by the argument that faction runs so high in many Indian villages that group elections would inevitably become highly contested and that it would be necessary to provide for them all the machinery of an ordinary election We were informed not only that conditions in the villages had changed so materially of late that the circumstances which some six or seven years ago made it justifiable to put forward a proposal for the use of the group system no longer existed, but that there was no real support for the 24 introduction of such a system either from public or from official opinion in India. In the light of our further investigation of this question we are satisfied that in the case of the Provincial Legislatures the balance of advantage at the present moment clearly lies in retaining the system We do not, however, desire to be understood as of direct electron reporting against the introduction of some system of indirect election in the future. The considerations which we have advanced against its adoption at the present moment may lose much of their force as social conditions change, and as institutions of local self-government develop in the Provinces The problem is essentially one which Indians must consider for themselves, and on which we feel sure that Parliament will be ready to listen with the utmost attention to any recommendations which may be made to it by Provincial Legislatures."

It is moved by the Lord Middleton Line 24, to leave out ("either from public or from official opinion ) and insert ("from any quarter")

The same is agreed to

It is moved by the Marquess of Linlithgow Line 36, after ("it") to insert ("bereafter")

The same is agreed to

Paragraph 129 is again read, as amended.

The further consideration of paragraph 129 is postponed.

It is moved by the Lord Archbishop of Canterbury. Page 63, after paragraph 129, to insert the following new paragraph —

("129A We have alluded above to the development of institutions of local self-government in the Provinces This allusion may furnish an opportunity of saying that though this subject did not come directly within the scope of our enquiry we are fully conscious of its great importance. Indeed, the progress of self-government in the Provinces of India will depend on the growth not only of responsible Governments at the top but also of local self-governing institutions from the bottom—from the village community or panchayat upwards. It is thus that the great mass of the Indian peasantry, constituting a vast majority of the people, whose welfare has been constantly in our minds during the whole course of our discussions can be trained in those qualities of responsible citizenship which may hereafter entitle

them to the full Provincial franchise. These are matters upon which Indians must form their own conclusions; but we venture to express the hope that they will, from the first, give full attention to them.") The same is agreed to.

New paragraph 129A is again read.

The further consideration of paragraph 129A is postponed.

Paragraph 130 is again postponed.

Paragraph 131 is again read.

It is moved by the Marquess of Linlithgow. Page 64, lines 10 and 11, to leave out from (" voter).") in line 10 to the end of line 11.

The same is agreed to.

Paragraph 131 is again read, as amended.

The further consideration of paragraph 131 is postponed.

Paragraph 132 is again read, as amended.

It is moved by the Lord Hardinge of Penshurst. Page 65, line 6, to leave ont (" voters.")

The same is agreed to.

Paragraph 132 is again read, as amended.

The further consideration of paragraph 132 is postponed.

Paragraph 133 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones and the Lord Snell. Page 65, line 44, after (" in ") to insert (" Bengal, Bihar and Oxissa "). Objected to.

On question :-

Contents (6).

Lord Snell.

Mr. Attlee.

Sir Austen Chamberlain.

Mr. Cocks.

Mr. Foot.

Mr. Morgan Jones.

Not Contents (17).

Lord Archbishop of Canterbury.

Marquess of Zetland.

Marquess of Linlithgow.

Earl of Derby.

Earl Peel.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan.

Sir Reginald Craddock.

Mr. Davidson.

Sir Samuel Hoare.

Sir Joseph Nall.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

The said amendment is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 65, lines 46 and 47, to leave out from ("in") in line 46 to ("the") in line 47, and to insert ("every Province, snbject, however, to further "consideration in the case of the North-West Frontier Province,").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 66, line 4, to leave out (" sucb ") and to leave out (" as are possible "). The same is agreed to.

Paragraph 133 is again read as amended.

The further consideration of paragraph 133 is postponed.

Paragraph 134 is again read

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 66, line 29, after ("practicable") to insert ("and we express our hope "that this should be before the second election under the new constitution").

The same is disagreed to.

Paragraph 134 is again read, as amended.

The further consideration of paragraph 134 is postponed.

Paragraphs 135 to 136 are again postponed.

It is moved by Sir Reginald Craddock. Page 67, after paragraph 136, to insert the following new paragraph:—

("136A. There is a further point in connection with the disqualification of candidates which may conveniently be mentioned here. Proposal 84 of the White Paper recites the disqualifications to be prescribed for the membership of a Provincial Legislature. Among these are included conviction for the offence of corrupt practices or other election offences, and in the case of a legal practitioner, suspension from practice by order of a competent court. We observe, however, that in the election rules under the Montagu Reforms, as well as in the Morley-Minto Reforms before them, the conviction of a person of certain criminal offences was a disqualification for the membership of the Legislature. On this particular point the rule ran as follows:—

'A person against whom a conviction by a Criminal Court involving a sentence of transportation or imprisonment for a period of more than one year is subsisting shall, unless the offence of which be was convicted has been pardoned, not be eligible for election for five years from the date of expiration of the sentence.

'Provided that on application made by a person disqualified the Local Government with the previous approval of the Governor-General in Council may remove the disqualification.'

"We are not clear why this rule, which has the sanction of nearly 25 years' usage bebind it, should have been eliminated from the disqualifications contained in Proposal 84 of the White Paper, and we recommend its retention.")

Objected to.

On Question :--

Contents (16).

Marquess of Zetland.
Marquess of Linlithgow.
Earl of Derby.
Earl Peel.
Lord Middleton.

Not Contents (7).

Lord Archbishop of Canterbury. Lord Snell. Lord Hutchison of Montrose. Mr. Attlee. Mr. Cocks. Contents (16)-contd

Lord Hardinge of Penshurst. Lord Rankeillour

Mr Butler

Major Cadogan Sir Austen Chamberlain.

Sir Reginald Craddock

Mr Davidson Sir Samuel Hoare

Sir Joseph Nall

Lord Eustace Percy Sir John Wardlaw-Milne

The Earl of Lytton did not vote

The said amendment is agreed to

Paragraphs 137 and 138 are again postponed.

Paragraph 139 is read, as amended, and is as follows .-

"139 We do not think that the consent of the Governor should any longer be required to the introduction of legislation which affects religion or religious rites and usages. We take this view, not because we think that in practice the necessity for such consent might prejudice attempts to promote valuable social reforms, which has been suggested as a reason for dispensing with it, but because in our judgment legislation of this kind is above all other such as ought to be introduced on the responsibility of Indian Ministers. We have given our reasons elsewhere for bolding that matters of social reform which may touch, directly or indirectly, Indian religious beliefs can only be undertaken with any prospect of success by Indian Ministers themselves, and, that being 80, we think it undesirable that their responsibility in this most important field should be shared with a Governor It has been objected that the mere introduction of legislation affecting religion or religious rites and nsages might be dangerous at times of religious or communal disturbance, and might indeed itself produce such disturbance. We observe, however, a Proposal in the White Papers whereby the Governor would be empowered, in any case in which be considers that a Bill introduced or proposed for introduction, or any clause thereof, or any amendment to a Bill moved or proposed, would affect the discharge of his special responsibility for the prevention of any grave menace to the peace or tranquility of the Province, to direct that the Bill, clause or amendment shall not be further proceeded with This appears to us an ample safeguard against the danger to which we have referred, and in addition it would of course always be open to the Governor, in his discretion, to fefuse his assent to any Bill which has been passed by the Legislature, it in his opinion it is undesirable on any ground that it should become law also thought at first that a Provincial Legislature ought not to be empowered (as they are not empowered at present) to pass a law which repeals or is repugnant to an Act of Parliament extending to British India, even though the prior consent of the Governor to its introduction in the Legislature might be required. We understand, however, that the great bulk of the existing law of India is the work of Indian legislative bodies and that there are in fact very few Acts of Parliament (apart from those relating to subjects on which it is proposed that the Legislatures shall have no power to legislate at all) which form part of the Indian statute book, and fewer still dealing with matters which will fall within the provincial sphere. In these circumstances we think that the

Not Contents (7) -- contd.

Mr Foot

Mr Morgan Jones

proposal should stand; hut the Governor's Instrument of Instructions 40 might perhaps direct him to reserve bills which appear to him to fall 'within this category"

It is moved by the Lord Hardinge of Penshurst Line 10, to leave out ("only") and to insert ("best") and to leave out ("any").

The same is agreed to

It is moved by the Lord Rankeillour Lines 13 to 28, to leave out from ("Governor") in line 13 to ("We") in line 28 and to insert ("In saying this, however, we must guard ourselves against the implication "that the Governor's special responsibility for the protection of the "legitimate interests of minorities does not extend to legislation as well as "administration On the contrary it will clearly he his duty to protect " all minorities from unjust proposals in the Legislature In the case of " measures introduced by ministers we understand that it is intended that "he shall have the power of directing the withdrawal or amendment of "any Bill, and we think that this power should be made explicit in the "Constitution Act in the case of other Bills it will be open to him by "formal Message or otherwise to intimate that he will be unable to give "his assent to the proposals either in any form or without amendment, and we note that it is already provided that he may stop the progress "of any Bill which is of so provocative a nature as to involve his other "special responsibility for the peace and tranquillity of the Province "We should add that suitable machinery should be devised to ensure that "complaints of minorities shall be brought to the notice of the Governor").

The amendment, by leave of the Committee, is withdrawn'

'It is moved by Sir Samuel Hoare and Mr Butler Line 13, after ("has") to insert ("been represented to us that the removal of the safeguard of the Governor's previous sanction may operate to the disadvantage of small minorities such as the Indian Christians who "would not be in a position to make effective their objections to legislation which they regarded as prejudicial. But we do not think "that the recommendation we have just made is, in fact, open to this "criticism The Governor could always prevent the introduction or "secure the withdrawal of any legislative proposal by his Ministers "which he regarded as inconsistent with the discharge of his special "responsibility for the protection of minorities, and he would, in "addition, be free, as indicated in the next paragraph, to refuse his "assent to any Bill which had been passed by the Legislature if, in his "opinion, it were undesirable on any ground that it should become law "It would also he open to him to intimate to the Legislature by Message "or otherwise the attitude which he felt hound to take to any proposal "under discussion, to the extent even of making it clear that he would "be unable to accord his assent to the proposal if the Legislature were "to pass it It has further')

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr Butler Lines 22 and 23, "to leave out from ("with") in line 23 to ("We") in line 27 and to "insert ("We understand that this proposal is, in fact, intended to meet "precisely such a situation as that just indicated—namely a situation in which the mere discussion of a question in the Legislature might itself "so disturb public opinion as to give rise to disorder. We entirely "concur that the Governor should possess such a power, but we think "that his Instrument of Instructions should make quite clear the purpose for which it is designed, namely, that it is not primarily intended as "a safeguard against the passing into law of a measure which the "Governor considered dangerous to peace and tranquillity. For this "purpose the safeguard is the power of withholding assent")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Line 31, to leave out ("Governor") and to insert ("Governor-General").

The same is agreed to.

It is moved by The Lord Middleton. Line 40, to leave out (" might "perhaps") and to insert (" should ").

The same is agreed to.

Paragraph 139 is again read, as amended.

The further consideration of paragraph 139 is postponed.

Paragraph 140 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 68, line 39, after ("pleasure") to insert (", we regard this discretionary power as a real one to be used whenever necessary.")

The same is agreed to.

Paragraph 140 is again read, as amended.

The further consideration of paragraph 140 is postponed.

Paragraph 141 is read, as amended, and is as follows:-

"141. It is proposed that the powers of a Provincial Legislature shall not extend to any part of the Province which is declared to be an "Excluded Area " or a "Partially Excluded Area." In relation to the former, the Governor will himself direct and control the administration; in the case of the latter he is declared to have a special responsibility. In neither case will any Act of the Provincial Legislature apply to the Area, unless by direction of the Governor given at his discretion, with any exceptions or modifications which he may think fit. The Governor will also be empowered at his discretion to make regulations baving the force of law for the peace and good government of any Excluded or Partially Excluded Area, but subject in this case to the prior consent of the Governor-General. We have already expressed our approval of the principle of Excluded Areas, and we accept the above proposals as both necessary and reasonable, so far as the Excluded Areas proper are concerned. We think, however, that a distinction might well be drawn in this respect between Excluded Areas and Partially Excluded Areas, and that the application of Acts to, or the framing of Regulations for, Partially Excluded Areas is an operation which might appropriately be performed by the Governor acting on the advice of his Ministers the decisions taken in each case being, of course, subject to the Governor's special responsibility for 20 Excluded Areas, that is to say, being subject to his right to differ from the proposals of his Ministers if he thinks fit."

It is moved by Sir Samuel Hoare on behalf of the Viscount Halifax, line 20, after (" for ") to insert (" Partially ").

The same is agreed to.

Paragraph 141 is again read, as amended.

The further consideration of paragraph 141 is postponed.

Paragraph 142 is again postponed.

Paragraph 143 is again read.

It is moved by the Lord Eustace Percy. Page 69, lines 29 to 31, to leave out from ("proposal") in line 29 to ("without") in line 31 and to insert ("for the "imposition of taxation or for the appropriation of public revenues, nor any proposal affecting or imposing any charge upon those revenues, can be "made").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 69, line 37, after ("revenue") to insert ("which require a vote of the Legislature").

The same is agreed to.

Paragraph 143 is again read.

The further consideration of paragraph 143 is postponed.

Paragraph 144 is again postponed.

Paragraph 145 is again read.

It is moved by the Lord Rankeillonr. Page 71, line 1, after ("Paper,") to insert ("except that we think that the salaries and pensions of the Judges, "in accordance with English precedent, should not be open to discussion").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 71, line 8, at the end to insert ("In one respect, however, we think the list is defective. The "administration of Excluded Areas is a matter which will be the exclusive responsibility of the Governor and, following the analogy of the Governor-"General's reserved departments, we think that the expenditure required for these areas, whether derived from provincial or central revenues, should not be subject to the vote of the provincial Legislature.")

The same is agreed to.

Paragraph 145 is again read, as amended.

The further consideration of paragraph 145 is postponed.

Paragraph 146 is again postponed.

Paragraph 147 is again read.

It is moved by the Lord Rankeillour on behalf of the Marquess of Salisbury. Page 71, line 35, after ("that") to insert ("both in respect to Financial" Powers and generally ").

The same is agreed to.

Paragraph 147 is again read, as amended.

The further consideration of paragraph 147 is postponed.

Appendix I is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 73, line 5, in the first column after ("discretion") to insert ("in the proportion of 50 per cent. women and 50 per cent. representatives of Labour").

The same is disagreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. 'Page 73, line 20, to leave out ("combined with") and to insert ("or"). The same is agreed to.

Appendix I is again read as amended. The further consideration of Appendix I is postponed.

Paragraphs 148 to 150 are again postponed.

Paragraph 150A is read, as amended, and is as follows:

"150A. The rights, authority and jurisdiction which will thus be "conferred by the Crown on the new Central Government will not "extend to any Indian State. It follows that the accession of an "Indian State to the Federation cannot take place otherwise "than by the voluntary act of its Ruler. The Constitution Act "cannot itself make any Indian State a member of the Federation; "it will only prescribe a method whereby the State may accede "and the legal consequences which will flow from the accession. "There can be no question of compulsion so far as the States "are concerned. Their Rulers can enter or stand aside from the "Federation as they think fit. They have announced their willing-"ness to consider federation with the Provinces of British India "on certain terms; but whereas the powers of the new Central "Government in relation to the Provinces will cover a wide field " and will be identical in the case of each Province, the Princes have "intimated that they are not prepared to agree to the exercise by "a Federal Government for the purpose of the Federation of a similar 17 "range of powers in relation to themselves."

It is moved by the Marquess of Linlithgow. Line 17, to leave out (" a similar ") and to insert (" an identical ").

The same is agreed to.

Paragraph 150A is again read, as amended. The further consideration of paragraph 150A is postponed.

Paragraph 152 to 154 are again postponed.

Paragraph 155 is again read.

It is moved by the Marquess of Zetland. Page 78, lines 42 to 45, to leave out from (" capacity ") in line 42 to the end of line 45 and to insert (" this suggestion ").

The same is agreed to.

Paragraph 155 is again read, as amended.

The further consideration of paragraph 155 is postponed.

Paragraphs 156 to 158 are again postponed.

Paragraph 159 is again read.

It is moved by the Lord Middleton. Page 80, line 1, to leave cut (" public"). The same is agreed to.

It is moved by Sir John Wardlaw-Milne. Page 80, lines 32 and 33, to leave out (" not merely ").

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir John Wardlaw-Milde. Page 80, lines 33 to 35, to leave out from ("contribution") in line 33 to ("to") in line 35.

The amendment, by leave of the Committee, is withdrawn.

It is moved by Sir Samnel Hoare and Mr. Butler. Page 80, line 37, to leave out ("leave nothing undone") and to insert ("do their utmost").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 80, line 39, to leave out ("quite inevitable") and to insert ("absolutely necessary").

The same is agreed to.

Paragraph 159 is again read, as amended.

The further consideration of paragraph 159 is postponed.

Paragraph 160 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 81, line 7, after the first (" the ") to insert (" maun ").

The same is agreed to.

Paragraph 160 is again read, as amended.

The further consideration of paragraph 160 is postponed.

Paragraph 161 is again read.

It is moved by Sir Reginald Craddock. Page 81, line 39, after (" are ") to insert (" almost ").

The same is agreed to.

Paragraph 161 is again read, as amended.

The further consideration of paragraph 181 is postponed.

Paragraphs 162 to 166 are again postponed.

Paragraph 167 is again read.

It is moved by Mr. Butler on behalf of the Viscount Halifax. Page 85, lines 18 and 19, to leave out from ("the") in line 16 to the end of the paragraph and to insert ("necessity arising for the exercise by the Governor-General "of his special power in the financial field.")

The same is agreed to.

Paragraph 167 is again read, as amended.

The further consideration of paragraph 167 is postponed.

Paragraph 168 in again postponed.

Paragraph 170 is again read.

It is moved by the Lord Middleton. Page 86, line 23, to leave out ("assume") and to insert ("think").

The same is agreed to.

It is moved by the Lord Middleton. Page 86, line 24, to leave out ("will") and to insert ("should").

The same is agreed to.

Paragraph 170 is again read, as amended.

The further consideration of paragraph 170 is postponed.

Paragraphs 171 and 172 are again postponed.

Paragraph 173 is again read.

It is moved by the Lord Rankeillour. Page 88, line 1, after ("reserved.") to insert ("It might even conceivably be necessary for him to take into his "own hands or to direct the Governor to assume in his discretion any department of the Provincial Government.")

The amendment, by leave of the Committee, is withdrawn

It is moved by Sir Reginald Craddock. Page 88, line 10, after (" areas ") "to insert (" There may also be cases in which at the time of an emergency "not connected with any Constitutional crisis it may be necessary for the "Federal Government or the Governor-General to issue instructions to a "Provincial Government in connection with the co-operation of the police, " such as arose at the outbreak of the War, especially in connection with "the guarding of railways and bridges or the influx of returning revolution-" aries from abroad.")

The amendment, by leave of the Committee, is withdrawn

It is moved by the Lord Eustace Percy Page 88, line 10, after (" areas,") to insert (" or, in times of emergency, with regard to the guarding of railways " and bridges and the like. In frontier areas, and especially in the North-" West Frontier Province special measures may have to be taken in certain " circumstances to control the movement of persons or goods")

The same is agreed to.

Paragraph 173 is again read, as amended.

The further consideration of paragraph 173 is postponed.

Paragraph 174 is read, as amended, and is as follows:-

" 174. It may be assumed that in practice the willing co-operation of the other departments of Government will render unnecessary any recourse to these special powers, and we should view with dismay the prospects of any new Constitution, it the relations between the ministerial and the reserved Departments were conducted in an atmosphere of jealousy or antagonism. The infinence of the Governor-General will no doubt always be exerted to secure co-ordination and harmony ., but it may well be that some permanent co-ordinating machinery will be desirable The British-India Joint Memorandum suggests a statutory Committee of Indian Defence constituted on the lines of the Committee of Imperial Defence, but we are not sure that its authors fully appreciate the position and functions of the latter, since it is not a statutory body and its value is perhaps increased by the elasticity of its constitution. We are disposed to think that a body with statutory powers and duties might embarrass the Governor-General and even be tempted to encroach upon his functions An advisory body, similar to the Committee of Imperial Defence, constituted at the Governor-General's discretion would not be open to that criticism and might, we think, have many advantages. It has been urged upon us that, in order to build up an informed opinion upon Defence questions, a statutory Committee of the Legislature should be established. We understand that, outside the formal opportunities of discussing Defence questions on such occasions as the Defence Budget, opportunities are already given to members of the Legislature to inform themselves upon Army questions, and, provided that the extent and methods of consultation are clearly understood to rest in the discretion of the Governor-General, we see no objection to the formation of any Commuttee or Commuttees that the Federal Government and Legislature may consider useful We feel, however, that this is essentially a question to be settled by the Legislature and not by the Constitution Act

It is moved by the Lord Eustace Percy. Line 6, after ("antagonism") to insert (" But, though ")

I he same is agreed to.

It is moved by the Lord Eustace Percy Line 7, to leave out (" hnt ") The same is agreed to

It is moved by the Lord Eustace Percy Line 29, to leave out (" the Legislature ") and to insert (" them ") The same is agreed to

Paragraph 174 is again read, as amended The further consideration of paragraph 174 is postponed.

Paragraph 175 is again postponed.

Paragraph 175A is read, as amended, and is as follows

175A In illustration of the principle that the Governor-General Employment should invite the collaboration of the Federal Ministry to the widest extent compatible with the preservation of his own responsibility, we would refer to the question of lending Indian personnel of the Defence forces for service outside India There have heen many occasions on which the Government of India have found themselves able to spare contingents for operations overseas in which considerations of Indian defence have not been involved, and we may presume that such occasions will recur There appears to be some misconception in India on this point, which it would be desirable to remove. It is not the case that, because a Government can in particular circumstances afford a temporary reduction of this kind in its standing forces, the size of those forces is thereby proved to be excessive, or conversely, that if it is not excessive troops cannot be spared for service elsewhere. These standing forces are in the nature of ar insurance against perils which may not always be insistent but which nevertheless must be provided for There is thus no ground for assuming a prime faces objection to the loan of continuents on particular occasions. It on such occasions the Covernor-General is asked whether be can lend a contingent, he must decide, first, whether the occasion involves the defence of India in the widest sense and secondly, whether he can spare the troops having regard to all the circumstances at the time. Both these decisions would fall within the exclusive sphere of his responsibility If he decided that troops could be spared, the only remaining constitutional issue would be narrowed down to one of broad principle, namely, that Indian leaders as represented in the Federal Ministry should be consulted before their fellow-countrymen were exposed to the risks of operations in a cause that was not their own In view, however, of the complexities that may arise, we do not feel able to recommend that the ultimate authority of the Governor-General should he limited in this matter Our proposal is that when the question auses of lending Indian personnel of the Defence Forces for service outside India on occasions which in the Governor-General's decision do not involve the defence of India in the broadest sense, he should not agree to lend such personnel without consultation with the Federal Ministry We have little doubt that in practice he will give the greatest weight to the advice of the Federal Ministry before reaching his final decision The financial aspect has also to he considered Although in the circumstances we are discussing the defence of India would not be involved, it might on occasions he in India's general interests to make a contribution towards the cost of external operations A proposal in the White Paper<sup>1</sup> reproduces the provision of s 20 (1) of the Government of India Act that

"the revenues of India shall be applied for the purposes of the government of India alone"; and a contribution in the general interests of India would come within the scope of that provision. Under the new Constitution, however, the recognition of interests of this nature would fall within the province of the Federal Ministry and Legislature, since, ex hypothesi, they would not be defence interests. If, therefore, the question should arise of offering a contribution from India's revenues in the circumstances we are discussing (and the interests in question did not fall under the other reserved department of External Affairs) we are of opinion that it would need to be ratified by the Federal Legislature."

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Lines 27 to 30, to leave ont from ("own") in line 27, to ("Our") in line 30, and to insert ("We think that this should be done and we have "little doubt that in practice the Governor-General will give the greatest "weight to the advice of the Ministry before taking his final decision.")

Objected to.

On Question:-

Contents (5).

Lord Snell. Mr. Attlee.

Mr. Cocks. Mr. Foot.

Mr. Morgan Jones.

Not Contents (20).

Lord Archbishop of Canterbury.

Marquess of Zetland. Marquess of Linlithgow.

Earl of Derby. Earl of Lytton.

Earl Peel.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock.

Mr. Davidson.

Sir Samuel Hoare.

Sir Joseph Nall. Lord Eustace Percy.

Sir John Wardlaw-Milne.

Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Line 30, to leave out ("Our proposal is that") and to insert ("Further").

The same is disagreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Line 34, to leave out ("consultation with") and to insert ("the consent of").

The same is disagreed to.

It is moved by the Lord Rankeillour. Line 36, after ("Ministry") to insert ("except in case of extreme emergency where such consultation is "impossible").

The same is disagreed to.

Paragraph 175A is again read,

The further consideration of paragraph 175A is postponed.

Paragraphs 176 to 180 are again postponed.

Paragraph 181 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 91, line 15, after ("countries") to insert ("or the frontier tracts of India").

The same is agreed to.

Paragraph 181 is again read, as amended.

The further consideration of paragraph 181, is postponed.

Paragraph 182 is again postponed.

Paragraph 183 is again read.

It is moved by Mr. Butler on behalf of the Viscount Halifax. Page 92, line 19, to leave out (" is ") and to insert (" has for some time been ").

The same is agreed to.

Paragraph 183, is again read, as amended.

The further consideration of paragraph 183 is postponed.

Paragraph 184 is again postponed.

Paragraph 185 is again read.

It is moved by the Marquess of Zetland. Page 94, line 23, to leave out ("administration") and to insert ("administrative").

The same is agreed to.

Paragraph 185 is again read, as amended.

The further consideration of paragraph 185 is postponed.

Paragraph 186 to 189 are again postponed.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 96, after paragraph 189, to insert the following new paragraphs:—

(" 190. In fact we go further and we suggest that any attempt to create at the Centre an exact reproduction of the machinery which functions at Westminster would be doomed to failure. In this country the system of responsible government depends on stable divisions on Party lines and, generally speaking, functions most satisfactorily when there are only two main Parties. These parties are not the creation of groups formed by members of the legislature subsequent to their election, but represent real divisions of opinion which extend back to the constituencies. In the Federal legislature, which we are now discussing, apart from the communal cleavages which already make the working of the Westminster system difficult in many provinces, there will be two distinct categories of members, the clected representatives from British India and the nominees of the Rulers of States. It seems difficult, therefore, to envisage the emergence of Parties on lines familiar to this country. Two further obstacles present themselves. The first is that, owing to the nature of the Federation, the members of the legislature, will not be equally concerned in its territory, and that the jurisdiction of the Federation will not extend as to all subjects equally over that territory. The second is that the subject-matter of Central administration and legislation provides a somewhat slender basis for a full parliamentary system. Ninety per cent. of everything that concerns the ordinary citizen will come within the ambit of Provincial administration. For these reasons we believe that responsibility at the Centre will be developed on lines very different from those at Westminster. It is not, perhaps, always realised in India that the British Cabinet is in fact the master of the legislature. This is a result if the Party system, for the Cabinet, although formally chosen by the Crown, is in fact composed of the leading members of the Party in a majority. It maintains its control largely through the discipline of the Party machine backed by the power of Dissolution. We do not think that this power of the Ministry to control the Legislature will be reproduced at Delhi, indeed we think it probable that the Ministry will be far more the servant than the master of the legislature, in other words, the members of the legislature will have to take full responsibility for their actions, and we do not think that the practice, whereby a ministry is dependent from day to day on the Vote of the Legislature will be workable in India. We, therefore, suggest certain proposals for giving—what is essential—greater stability to the administration.

"191 The Federal Executive, in our view, should consist of the Governor-General, the Counsellor in charge of Defence, and Ministers, the number of whom we think it undesirable to specify We consider that when the Legislature has been constituted the Governor-General should consult with leading members in order to find out what combination of persons would be likely to command the confidence of the legislature. He should then submit these Ministers and the Counsellor in charge of Defence as a Ministry to the Legislature for a Vote of Confidence If this vote is carried the Ministry should rei nin office for a definite term during which period it could only be removed by a definite Vote of No Confidence carried by a two thirds majority. As already stated the position of the Ministry will be something like that of the Swiss Executive Formal joint responsibility will not be explicitly laid down as indeed, it is not in most constitutions, but the actions of the Government would be the actions of all its members, and, although the Ministry would be composed of heterogenous elements it would be subjected to those powerful influences which tend to create solidarity in any body of persons holding positions of responsibility. We think that in the early stages of the working of the new Constitution the Governor-General will greater at meetings of his Cabinet and that only as time goes on will this practice fall into desuetude. There should, however, be a First Minister who will preside in the absence of the Governor-General and lead in the Legislature He should hold a portfolio without too heavy an administrative content For the working of the Legislative machine we suggest the setting up of a number of standing committees, some of which Defence, Finance, Foreign Affairs, should be statutory These committees should correspond with the functions of the Central Government They would meet from time to time during the Session The Minister should preside, while in the case of the Committee of Defence, the official Member would do so We conceive of these committees working somewhat on the lines of those of municipal bodies or in the Ceylon Constitution The object should be to bring the members of the Legislature into real contact with administration. We think that the Committee stage of a Bill should, wherever possible, be remitted to the standing committee dealing with the particular function of government concerned. We think that in this way, through a developed committee system, much of the difficulty which has been brought to our notice of State Members voting on purely British India questions would be avoided as it would be natural to remit Bills dealing solely with British India to committees of members drawn only from British India The Defence Committee would have less power of control than would be possessed by the other committees, but in spite of this would, we think, form a valuable

field of experience for members. We consider that at all these committees it should be the usual practice for officials to be present, not for influencing policy, but for providing information. In our view, owing to the subjectmatter which would be dealt with at the Centre and to the position of the Federation, it is unlikely that governments will be formed with definite legislative programmes, as in this country. We think that much legislation will come forward in the way of private members' Bills. We have made this general sketch of the way in which we might expect responsibility to be exercised at the Centre, because it is important to realize that the British system is not the only possible system and that it itself is susceptible of reform in some directions. It is a question as to what provisions can be included in the Constitution Act itself. We would prefer to leave the development of the Constitution at the Centre to the elected Members to work out the forms and methods which seem appropriate. We attach importance, however, to the provision which will give to the Ministry some degree of stability, for we have seen in many countries where there has been no stable Party ... ystem in Legislatures, but only a number of groups, the danger and weakness entailed by constant changes of Ministry; and we should desire that at the Centre, from the start, it should not be assumed that because the Legislature takes a different view from the Ministry on a particular point that therefore the Ministry should resign. It is for this reason that we have suggested that changes of Ministry should only take place as the result of a direct Vote of No Confidence carried by a two-thirds majority.")

The same are disagreed to.

Paragraph 194 is read, as amended, and is as follows:-

" 194. There is no part of the subject of our enquiry which has Difficulty of seemed to us to present greater difficulties than the question of the method of election to a Central Legislature for India. It is one on which there has always been a marked difference of opinion; and we recall that the Joint Select Committee which considered the Government of India Bill in 1919 did not accept the recommendations of the Southborough Committee which had been embodied in the Bill, and that there is a similar divergence between the recommendations of the Statutory Commission and the proposals in the White Paper. It should be recognized that to attempt to provide a legislative body which shall be

11 representative of a population of over 350 millions is without precedent. We are met at the outset by the difficulty of applying the representative system on a basis of direct representation to a unit of such magnitude. On the one hand, if the constituencies were of a reasonable size the resultant Chamber would be unmanageably large; if, on the other hand, the Chamber were of a reasonable size the constituencies on which it was based would necessarily be enormous. In these circumstances our task has been an anxious one, and we have only arrived at our conclusions after a careful and prolonged examination of the matter in all its aspects."

It is moved by the Marquess of Linlithgow. Line 11, to leave out (" over ") and to insert (" nearly ").

The same is agreed to.

Paragraph 194 is again read, as amended.

The further consideration of paragraph 194 is postponed.

Paragraph 195 is again read.

It is moved by the Marquess of Linkthgow. Page 98, line 37, to leave out (" is to ") and to insert (" would "); line 39, to leave out (" will ") and to insert ("would"). Page 98, line 40, to leave out ("will") and to insert ("would"); line 42, to rave out ("will") and to insert ("would"); line 44, to leave out ("provided") and to insert ("proposed"); line 45, to leave out ("shall") and to insert ("should"); line 46, to leave out ("will") and to insert ("would"); page 99, line 1, to leave out ("will") in two places and to insert ("would").

The same are agreed to.

Paragraph 195 is again read, as amended.

The further consideration of paragraph 195 is postponed.

Paragraph 196 is again read.

It is moved by the Marquess of Linlithgow. Page 99, line 5, to leave out ("will") and to insert ("would"), line 9 to leave out ("will") and to insert ("would"); line 15, to leave out ("will") and to insert ("would"); line 16, to leave out ("will") and to insert ("would").

The same are agreed to.

Paragraph 196 is again read, as amended.

The further consideration of paragraph 196 is postponed.

Paragraph 197 is again read.

It is moved by the Marquess of Linlithgow. Page 99, line 20, to leave ont ("will") and to insert ("would"); line 25, to leave out ("will") and to insert ("would"); line 27, to leave out ("will") and to insert ("would"); line 29, to leave out ("will") and to insert ("would"); line 31, to leave out ("will") and to insert ("would"); line 34, to leave out ("will") and to insert ("would"); line 36, to leave out ("will") and to insert ("would").

The same are agreed to.

Paragraph 197 is again read, as amended.

The further consideration of paragraph 197 is postponed.

Paragraph 198 is again postponed.

Paragraph 199 is read, as amended, and is as follows:-

"199. Direct election has the support of Indian opinion and is strongly advocated by the British-India Delegation in their Joint Memorandum. It has been the system in India for the last twelve years, and has worked on the whole reasonably well, though, it should be remembered, with a much more limited franchise than that now proposed. The Southborough Committee which visited India in 1919 for the purpose of settling the composition of, and the method of clection to, the Legislatures set up by the Government of India Bill of that year, did, it is true, recommend the indirect system; but the Joint Select Committee which examined the Bill were of a contrary view, and Parliament accepted the opinion of the Contmittee. It may also be argned that, with the increase in the size of the J.egislatures now proposed, it will be possible to effect so appropriate a reduction in the size of the existing constituencies as to diminist the objections based on that feature of the present system. But even the reduction in the size of constituencies which would follow from the White Paper proposals will still leave them unwieldy and unmanageable, unless the number of seats is increased beyond all reasonable limits. Where a single constituency may be greater in extent than the whole of Wales, a candidate for election could not in any event commend or even present his views to the whole body of electors, even if the means of communication were not, as in India, difficult and often non-existent, and quite apart from obstacles presented by differences in language and a widespread illiteracy; nor could a member after election hope to guide or

inform opinion in his constituency. These difficulties would he serious enough with the comparatively limited franchise proposed in the White Paper; but future extensions of that franchise would be inevitable, and it is obvious that with every increase in the electorate these difficulties are enhanced. Indeed, any considerable extension of the franchise under a system of direct election would cause an inevitable breakdown. We do not believe that constituencies both of large size and containing an electorate of hetween 200,000 and 300,000 people can be made the basis of a healthy parliamentary system. We think that Parliament and Indian public opinion should face these facts and should recognise that direct election, apart from its immediate merits or demerits at the present time, cannot provide a sound basis for Indian constitutional development in the future. We cannot believe that it would be wise to commit India at the outset of her constitutional development to a line 39 which must prove to he a hlind alley."

It is moved by Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Lines 15 to 39, to leave out from ("system.") in line 15 to the end of the paragraph and to insert ("Bearing in mind the strength of Indian opinion" in this matter we have come to the conclusion, notwithstanding the "objections which can be urged against it, that there is no alternative to "the adoption of a system of direct election").

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Marquess of Zetland. Line 19, to leave out ("greater in extent than ") and to insert ("more than twice as large in area as ").

The same is agreed to.

It is moved by the Lord Middleton. Line 34, to leave out ("public") The same is agreed to.

Paragraph 199 is again read, as amended.

The further consideration of paragraph 199 is postponed.

Paragraphs 200 and 201 are again postponed.

Paragraph 202 is again read.

If is moved by the Lord Rankoillour Page 101, line 15, after ("by") to insert (" past and present members of ")

The amendment, by leave of the Committee, is withdrawn.

It is moved by the Lord Eustace Percy. Page 101, lines 15 to 18, to leave out from ("bodies,") in line 15 to the end of the sentence and to insert ("but the general tenor of the evidence before us indicates that Indian opinion " is strongly opposed to this system, largely owing to its association with the "procedure under the Morley-Minto Constitution, which does not seem to "have worked well; and we cannot recommend it in present circumstances"). The same is agreed to.

It is moved by Sir Reginald Craddock. Page 101, line 40, to leave out (" and ") and after (" Europeans") to insert (" and Anglo-Indians"). The same is agreed to.

Paragraph 202 is again read, as amended.

The further consideration of paragraph 202 is postponed.

Paragraph 202A is read, as amended, and is as follows:-

"202A. We feel strongly, however, that it is not possible for Parlia- Indirect ment to lay down to-day the exact method of constituting the Central regarded in the Legislature for any long period of time. 'The question has been repeatedly nature of any the examined, hefore the passage of the present Government of India Act, by the Stantony Commission and he the Board Continued. by the Statutory Commission, and by the Round Table Conferences

and the Indian Franchise Committee in connection with the present proposals for reform. Throughout this whole period opinions have been deeply divided and no clear-cut solution has emerged, as indeed was to be expected when an attempt is being made to create a Federation on a scale and of a character hitherto without precedent. We have chosen the system of indirect election by the Provincial Legislatures, not because we do not feel the force of the arguments which can be brought against it, but because we think that it is the arrangement which will give the most practical system at the outset of the Federation. Moreover, while it will be possible in future to pass from the indirect to the direct system of election should experience show that step to be advisable, the maintenance and still more the extension of the system of direct election to-day would be to commit India to a system which logically leads to adult suffrage before any way has been discovered of overcoming the insuperable objections to the gigantic constituencies containing hundreds of thousands of voters which are mevitable with adult franchise in India under the ordinary system of direct election. We feel that the ultimate solution may well be found in some variant either of the system whereby groups of primary voters elect secondary electors, who vote directly for members of the federal assembly or of the system whereby those already elected to local bodies, such as village panchayats, are the voters who vote directly for members of that assembly. Systems of this kind apparently work with considerable success in many countries where conditions are not dissimilar to those in India. But the discovery of the best method of adapting those ideas to India's needs and of removing the obstacles which now stand in the way of their adoption is clearly one which should be made by Indians themselves in the light of their experience of the practical working of representative institutions under the new Constitution. We consider, therefore, that our proposals should be regarded as being in the nature of an experiment and that: further consideration should be given to the question of the method of composing the Central Legislature in the light of practical working of the Constitution. We do not propose that there should be any formal examination of the problem by a Statutory Commission after any specific date, for we think that experience has shown that there are strong objections to automatic provisions of this kind. But we consider that Parliament should recognise that after sufficient time has elapsed to enable clear judgments to be formed of the way in which the Constitution works and of the new political forces it has brought into being, it may be necessary to make amendments in the method of composing the Central Legislature, and we hope that if Indian opinion thinks modification is required the Federal Legislature will lay its own proposals before Parliament in the form recommended elsewhere<sup>1</sup> in this report."

It is moved by the Marquess of Zetland. Line 4, after ("examined") to insert ("both").

The same is agreed to.

It is moved by the Marquess of Zetland. Line 4, after ("Act") to insert (" and subsequently ") and to leave out the second (" by ").

The same is agreed to.

It is moved by the Lord Hardinge of Penshurst. Line 35, to leave out (" in the nature of an experiment") and to insert (" open to future review; "). The same is agreed to.

Paragraph 202A is again read, as amended.

The further consideration of paragraph 202A is postponed.

Paragraph 203 is again postponed.

Paragraph 204 is again read.

It is moved by the Marquess of Zetland. Page 102, lines 26 and 27, after ("year") in line 26, to insert a full stop and to leave out the brackets in lines 26 and 27. .

The same is agreed to.

Paragraph 204 is again read, as amended.

The further consideration of paragraph 204 is postponed.

Paragraphs 205 to 206 are again postponed.

Paragraph 207 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 103, line 44, to leave out ("nearly six hundred States") and to insert ("over 600 States, Estates and Jagirs which constitute the non-British portion of India.")

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr Butler. Page 104, line 14, to leave out (" by ") and to insert (" within ").

The same is agreed to.

Paragraph 207 is again read, as amended.

The further consideration of paragraph 207 is postponed.

Paragraph 208 is again postponed.

Paragraph 209 is again read.

It is moved by the Marquess of Linlithgow. Page 104, line 45, to leave out (" by ") and to insert (" on ").

The same is agreed to.

Paragraph 209 is again read as amended.

The further consideration of paragraph 209 is postponed.

Paragraphs 210 to 213 are again postponed.

Paragraph 214 is again read.

It is moved by the Lord Rankeillour. Page 106, line 30, to leave out (" a ") and to insert (" any Bill, clause or ").

The same is agreed to.

Paragraph 214 is again read, as amended.

The further consideration of paragraph 214 is postponed.

Paragraph 215 is again postponed.

Paragraph 216 is read, as amended, and is as follows :-

"216. The question was much discussed before us whether any special States" provision ought to be included in the Constitution Act prohibiting and British States' representatives from voting on matters of exclusively British India legislation. India concern. The British-India Delegation in their Joint Memorandum urge that this should be done, and their suggestions are briefly as follows:—(1) that in a division on a matter concerning solely a British-India subject, the States' representatives should not be entitled to vote; (2) that the question whether a matter relates solely to a British-India subject or not should be left to the decision of the Speaker of the House, which should be final; but (3) that if a substantive vote of no confidence is proposed on a matter relating solely to a British-India subject, the States' representatives should be entitled to vote, since the decision might vitally affect the position of a Ministry formed on a basis of collective responsibility: (4) that if the Ministry is defeated on a subject of exclusively British-India interest, it should not necessarily resign. We do not think that these suggestions would in any way meet the case. Circumstances may make any vote of a Legislature, even on a matter intrinsically unimportant, an unmistakable vote of no confidence; the distinction between formal votes of no confidence and other votes

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is an artificial and conventional one, and it would be impossible to base any statutory enactment upon it. On the other hand, the States have made it clear that they have no desire to interfere in matters of exclusively British-India concern, nor could we suppose that it would be in their interests to do so; but they are anxious, for reasons which we. appreciate, that their representatives should not be prevented by any rigid statutory provisions from exercising their own judgment, from supporting a Ministry with whose general policy they are fully in agreement, or from withbolding their support from a Ministry whose policy they disapprove. In these circumstances we think that the true solution is that there should be no such prohibition but that the matter should be regulated by the common sense of both sides and by the growth of constitutional practice and usage, and indeed we have no doubt that both parties will find it in their mutual interest to come to some suitable working arrangement at an early stage. We have, however, one suggestion to make which we think may be worth consideration. Under the Standing Orders of the House of Commons all Bills which relate exclusively to Scotland and have been committed to a Standing Committee are referred to a Committee consisting of all the members representing the Scottish constituencies, together with not less than ten nor more than fifteen other members. We think that a provision on these lines might very possibly be found useful, and that the Constitution Act might require that any Bill on a subject included in List 1II should, if extending only to British India, be referred to a Committee consisting either of all the British-India representatives or a specified number of them, to whom two or three States' representatives could, if it should be though: desirable, be added."

The Marquess of Linlithgow. Line 30, to leave out (" such ") and to insert (" statutory ").

The same is agreed to.

It is moved by the Lord Enstace Percy on behalf of the Marquess of Salisbury. Line 32 to 34, to leave out from (" usage") in line 32 to the end of the sentence.

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Paragraph 216 is again read, as amended.

The further consideration of paragraph 216 is postponed.

Paragraph 217 is read, as amended, and is as follows:-

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"217. The transformation of British India from a unitary into a Federal State necessitates a complete readjustment of the relations between the Federal and Provincial Governments. The Provincial Governments are at the present time subordinate to the Central Government and under a statutory obligation to obey its orders and directions though the Central Government, and indeed, the Secretary of State himself, is bound by statutory rules not to interfere with the provincial administration save for certain limited purposes in matters which under the devolution rules now fall within the transferred provincial sphere, But now that the respective spheres of the Centre and of the Provinces will in future be strictly delimited and the jurisdiction of each (except in the concurrent field which we have described elsewhere) will exclude the jurisdiction of the other, a nexus of a new kind must be established between the Federation and it constituent units. We are impressed by the possible dangers of a too strict adherence to the principles of what is known as Provincial Autonomy. The Statutory Commission in their recommendations for Provincial Autonomy were, we think, not unaffected by the desire to give the largest possible ambit to autonomy in the

provincial sphere, owing to their inability at that time to recommend responsibility at the Centre The larger measure of Indian self-government which has obtained in the Provinces during the past twelve years has also, we think, tended to develop and perhaps overdevelop a desire for complete freedom of control from the Centre We have discussed elsewhere in our Report both the legislative and the financial nexus which the White Paper proposes to create, and we confine our observations here to the administrative relations between the Federal Government as such on the one hand and the Provincial Governments and the Rulers or Governments of the Indian States on the other

It is moved by the Marquess of Linhthgow Lines 15 and 16, to leave out ('adherence to the principles of what is known as") and to insert (" interpretation of the principle of ")

The same is agreed to.

Paragraph 217 is again read, as amended.

The further consideration of paragraph 217 is postponed.

Paragraph 218 is again read

It is moved by the Marquess of Linithgow Page 108, line 45, to leave ont ("any") and to leave out ("limitations") and to insert ("reservations"). The same is agreed to

Paragraph 218 is again read, as amended.

The further consideration of paragraph 218 is postponed.

Paragraph 219 is read as amended and is as follows -

"219 We are of opinion that the proposals in the White Paper on Distinction "219 We are of opinion that the proposals in the venter laper on between this subject require modification in two directions. In the first place, legislation in the White Paper draws no distinction between the execution of Federal the reclusive and concurrent and concurrent and concurrent and concurrent are subject to the Endown Legislature is alone. Acts with respect to subjects on which the Federal Legislature is alone fields. competent to legislate (List I) and the execution of Federal Acts in the concurrent field (List III). It is evident that in its exclusive field the the Federal Government ought to have power to give directions—detailed and specific if need he—to a Provincial Government as proposed in the White Paper. But it is much more doubtful whether it should have such power in the concurrent field The objects of legislation in this field will be predominantly matters of provincial concern, and the agency by which such legislation will be administered will be almost exclusively a provincial agency The Federal Legislature will be generally used as an instrument of legislation in this field merely from considerations of practical convenience and, if this procedure were to carry with it automatically an extension of the scope of federal administration, the Provinces might'feel that they were exposed to dangerous encroachment. On the other hand, the considerations of practical convenience which would prompt the use of the Federal Legislature in this field will often he the need for securing uniformity in matters of social legislation, and uniformity of legislation will be useless if there is no means of enforcing reasonable uniformity of administration We think the solution is to he found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter form the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts or of the provincial authorities responsible for public prosecutions. There can clearly be no

question of Federal directions being issued to the Courts, not could such directions properly be issued to prosecuting authorities in the Provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subjects consists mainly of the regulation of mines, factories, employers' liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity, and cinematograph films. In respect of this class, we think that the Federal Government should, where necessary, have the power to issue general directions for the enforcement of the law, but a only to the extent provided by the Federal Act in question. In view of the manner in which we propose to constitute the Federal Legislature, it is improbable that a body so representative of provincial opinion will sanction any unreasonable encroachment upon the provincial field of action; but, as a further safeguard against such encroachment, we think that any clause in a statute conferring such powers should require the previous sanction of the Governor-General."

It is moved by the Marquess of Linlithgow. Line 9, after ("Paper.") to insert ("The same principle should apply to matters in which action or "inaction by a provincial Government within its own exclusive sphere "affects the administration of an exclusively Federal Subject—that is to "say, it should be open to the Federal Government to give directions to "a provincial Government which is so carrying on the administration of "a Provincial Subject as to affect prejudicially the efficiency of a "Federal Subject.").

The same is agreed to.

It is moved by the Lord Rankeillour on behalf of the Marquess of Salisbury. Line 39, to leave out ("general").

The same is agreed to.

Paragraph 219 is again read, as amended. The further consideration of paragraph 219 is postponed.

Paragraph 220 is again postponed.

Paragraph 221 is again read.

The following amendments are laid before the Committee and are as follows:—

The Lord Eustace Percy to move. Page 110, lines 32 to 40, to leave out from the beginning of the paragraph to ("A") in line 40.

The Marquess of Salisbury to move. Page 110, line 37, after ('legislate'') to insert ("and of social and economic legislation in the "Concurrent List").

The consideration of the said amendments is postponed.

It is moved by the Marquess of Linlithgow. Page 110, to leave out paragraph 221.

The same is agreed to.

Paragraph 222 is again postponed.

Paragraph 223 is read, as amended, and is as follows:--

"223. We do not observe any proposals in the White Paper dealing with disputes or differences between one Province and another, other than disputes involving legal issues, for the determination of which the Federal Court is the obvious and necessary forum. Yet it cannot be supposed that inter-provincial disputes will never arise, and we have

considered whether it would not be desirable to provide some constatutional machinery for disposing of them. At the present time the Governor General in Council bas the power to decide questions arising between two Provinces in cases where the Provinces concerned fail to arrive at an agreement, in relation to both transferred and reserved subjects, but plainly it would be impossible to vest such a power in the Governor General or Federal Ministry after the establishment of Provincial Autonomy, though we do not doubt that the good offices of both will always be available for the purpose But after careful consideration we have come to the conclusion that it would be unwise to include in the new Constitution any permanent machinery for the settlement of disputes of the sort which we have in mind, and in our opinion the more pludent course will be to leave the Provinces free to develop such supplementary machinery as the future course of events may show to be desirable. There will be necessarily many subjects on which inter-provincial consultation will be necessary, as indeed has proved to be the case even at the present time, and we consider that every effort should be made to develop a system of inter-Provincial conferences, at which administrative problems common to adjacent areas as well as points of difference may be discussed and adjusted Suggestions for a formal Inter-Provincial Council have been made to us, and we draw attention in later paragraphs of our Report's to a number of matters on which it is, in our view, important that the Provinces should co ordinate their policy, in addition to the financial problem which we discuss hereafter 2. It is obvious that, if departments or institutions of co-ordination and research are to be maintained at the Centre in such matters as agriculture, forestry, urigation, education, and public health, and if such institutions are to be able to rely on appropriations of public funds sufficient to enable them to carry on their work, the joint interest of the Provincial Governments in them must be expressed in some regular and recognised machinery of inter-Governmental consultation Moreover, we think that it will be of vital importance to establish some such machinery at the very outset of the working of the new constitution, since it is precisely at that moment that institutions of this kind may be in most danger of falling between two stools through failing to enlist the active interest citber of the Federal or the Provincial Governments, both of whom will have many other more immediate pre-occupations. There is, however much to be said for the view that though some such machinery may be established at the outset, it cannot be expected to take its final form at that time, and that Indian opinion will be better able to form a considered judgment as to the final form which it should take after some experience in the working of the new constitution. For this reason we doubt whether it would be desurable to fix the constitution of an inter Provincial Council by statutory provisions in the Constitution Act, but we feel strongly the desirability of taking definite action on the lines we have suggested as soon as the Provincial Autonomy provisions of the Constitution come into operation We tlank further that, although the Constitution Act should not itself prescribe the machinery for this purpose, it should empower His Majesty's Government to regulate the working of such co-ordinating machinery as it may have been found desirable to establish, in order that at the appropriate time means may thus be available for placing these matters upon a more formal basis "

It is moved by the Lord Eustace Percy Line 54, to leave out ("regulate the working of") and to insert ("give sanction by "Order-in-Council to")

The same is agreed to.

Paragraph 223 is again read, as amended

The further consideration of paragraph 223 is postponed.

(C14542) U 3

Paragraphs 224 and 225 are again postponed.

Paragraph 226 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 113, line 25, after ("Autonomy") to insert ("or with the principle that outside the federal "sphere the States' relations will be exclusively with the Crown").

The same is agreed to.

Paragraph 226 is again read, as amended.

The further consideration of paragraph 226 is postponed.

Paragraph 227 is again postponed.

Appendix (II) is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 114, line 6, after ("members") to insert ("three of whom must be women and three representatives of Labour").

Objected to.

On Question :---

Contents (6).

Lord Archbishop of Canterbury.

Lord Snell. Mr. Attlee.

Mr. Cocks. Mr. Foot.

Mr. Morgan Jones.

Not Contents (16).

Marquess of Linlithgow.

Earl Peel, Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock.

Mr. Davidson.

Sir Samuel Hoare.

Sir Joseph Nall. Lord Eustace Percy.

Sir John Wardlaw-Milne. Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Isaac Foot. Page 116, line 19, to leave out (" women"). The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 116, line 20, after (" Paper."), to insert (" The number of special seats assigned to Labour should be at least equal to the total number "assigned to Landholders, Commerce and Industry.")

Objected to.

On Question:-

Contents (4).

Lord Snell. Mr. Attlee.

Mr. Cocks.

Mr. Morgan Jones.

Not Contents (17).

Lord Archbishop of Canterbury.

Marquess of Linlithgow.

Earl Peel.

Lord Middleton.

Lord Rankeillour.

Lord Hutchison of Montrose.

Contents (4)—contd.

Not Contents (17)-contd.

Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Sir Reginald Craddock.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Sir Joseph Nall.
Lord Eustace Percy.
Sir John Wardlaw-Milne.
Earl Winterton.

The said amendment is disagreed to.

It is moved by Mr. Isaac Foot. Page 117, line 5, after ("Anglo-Indians"), to insert ("women").

The same is agreed to.

It is moved by Mr. Isaac Foot. Page 117, line 7, after (" Anglo-Indian "), to insert (" women's ").

The same is agreed to.

It is moved by Mr. Isaac Foot. Page 117, line 8, after ("Houses.") to insert ("In the case of the electoral college "composed of the women "members of the provincial Lower Houses, three seats shall be reserved "for Mohammedan women and one seat for an Indian Christian woman.")

The same is agreed to.

Appendix (II) is again read, as amended.

The further consideration of Appendix (II) is postponed.

Appendix (III) is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. In the entry in List I (b) relating to "Rajputana Agency (List II)," to leave out ("11,180,826") in the population column and to insert ("11,214,400").

The same is agreed to.

It is moved by Six Samuel Home and Mr. Butler. In the "Lower House" column of List II against the entry "Banswara" to leave out ("225,106") and to insert ("258,670"), and in the following line to leave out ("452,650") and to insert ("486,214").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. In the "Lower House" column of List X to leave out ("Central India States and Rajputana States "(Kushalgarh and Lawa) 319,089") and to insert ("Central India States "and Lawa (Rajputana) 285,525").

The same is agreed to.

Appendix (III) is again read, as amended.

The further consideration of Appendix (III) is postponed.

Paragraphs 228 to 231 are postponed.

Paragraph 232 is again read.

It is moved by the Lord Eustace Percy. Page 131, lines 5 to 15, to leave out from ("India.") in line 5 to the end of line 15 and to insert ("We are "therefore prepared to accept the proposal embodied in the White Paper that "the Governor-General, acting in his discretion, should be empowered to ").

The same is disagreed to.

(C 14542)

It is moved by Sir Samuel Hoare and Mr. Butler. rage 101, line 12, to 'leave out ("however").

The same is agreed to.

It is moved by the Marquess of Linlithgow and the Marquess of Zetland. Page 131, line 16, after (" allocate ") to insert (" to ").

The same is agreed to.

\* ragraph 232 is again read, as amended.

he further consideration of paragraph 232 is postponed.

Paragraph 233 is again read.

It is moved by Mr. Butler on behalf of the Viscount Halifax. Page 131, no 46, to leave out ("explained elsewhere") and to insert ("already splained").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 132, lines 21 to 23, to leave out from ("Commission.") in line 21 to the end of line 23 and to insert ("and we think that").

The same is agreed to.

Paragraph 233 is again read, as amended.

The further consideration of paragraph 233 is postponed.

Paragraphs 234 to 238 are again postponed.

Ordered that the Committee be adjourned till to-morrow at Three o'clock.

## Die Mercurii 10° Octobris 1934

## Present :

MARQUESS OF SALISBURY.
MARQUESS OF ZETLAND.
MARQUESS OF LINLITHGOW.
EARL OF DERBY.
EARL OF LYTTON.
EARL PEEL.
VISCOUNT HALIFAX.
LORD MIDDLETON.
LORD HARDINGE OF PENSHURST.
LORD SNELL.
LORD RANKEILLOUR.
LORD HUTCHISON OF MONTROSE.

MR. ATTLEE.
MR. BUTLER.
MAJOR CADOGAN.
SIR AUSTEN CHAMBERLAIN.
MR. COCKS.
SIR REGINALD CRADDOCK.
MR. DAVIDSON.
MR. FOOT.
SIR SAMUEL HOABE.
MR. MORGAN JONES.
SIR JOSEPH NALL.
LORD EUSTACE PERCY.
SIR JOHN WARDLAW-MILME.
EARL WINTERION.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read.

The Proceedings of yesterday are read.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. After paragraph 238A to insert the following new paragraph:—

("238B. It is proposed in the White Paper that such subjects as Health Insurance and Invalid and Old Age Pensions should be subjects of Provincial Legislation. We see serious objection to this, and consider that they should be included in the Concurrent List. While it is necessary that the more industrialized Provinces should be able to legislate on these subjects in the interests of the urban workers and should not have to wait for the concurrence of those which are predominantly rural, it is undesirable to exclude the possibility of All-India legislation which may well become necessary in order that there should be uniformity of treatment of the workers as between Province and Province and that industry in one Province should not be burdened with obligations not imposed in another. Mr. N. M. Joshi, in the Memorandum submitted by him, argued that social insurance should also be included in the list of Federal subjects, but here, again, we consider it would be better that it should be in the concurrent list.

Objected to.

All amendments are to the Draft Report (wide supra paras. 1-42B, pp. 470-491; and paras. 42-453, pp. 64-258) and NOT to the Report as published (Vol. I. Part I).

A Key is attached (see p. 627 et seq.), showing on which pages of the Proceedings amend-

ments to each paragraph can be found.

On Question: --

Contents (14).

Marquess of Salisbury. Marquess of Zetland.

Lord Middleton.

Lord Hardinge of Penshurst.

Lord Snell.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Attlee.

Mr. Cocks.

Sir Reginald Craddock.

Mr. Foot.

Mr. Morgan Jones.

Sir Joseph Nall.

Lord Eustace Percy. The said amendment is agreed to.

New paragraph 238B is again read.

The further consideration of paragraph 238B is postponed.

Paragraphs 239 and 240 are again postponed.

The Revised Lists are again considered.

Revised List (II) is again read.

It is moved by Sir Reginald Craddock. Page 140, item 7 (7), to leave out ("Compulsory acquisition of land") and to insert ("Transferred to List "III.").

The same is disagreed to.

It is moved by Sir Austen Chamberlain. Page 140, line 19, at the end, to insert (" not specified in List (I) ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 142, line 8, to leave out ("Prevention of cruelty to animals").

The same is agreed to.

It is moved by Mr. Attlee, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 142, to leave out line 36.

The same is agreed to.

Revised List (II) is again read, as amended.

The further consideration of Revised List (II) is postponed.

Revised List (III) is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 144, after line 45, to insert (" Health insurance, and invalid and old-age pensions '').

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 144, after line 45, to insert the following new item (" Prevention of crucity to animals ").

The same is agreed to.

Not Contents (12).

Marquess of Linlithgow.

Earl of Derhy.

Earl of Lytton. Earl Peel.

Viscount Halifax.

Mr. Butler. Major Cadogan.

Sir Austen Chamberlain.

Mr. Davidson.

Sir Samuel Hoare.

Sir John Wardlaw-Milne.

Earl Winterton.

Revised List (III) is again read, as amended.

The further consideration of Revised List (III) is postponed.

Paragraphs 241 to 244 are again postponed.

Paragraph 245 is again read.

It is moved by the Marquess of Linlithgow. Page 147, line 15, after ("alike;") to insert ("but").

The same is agreed to.

Paragraph 245 is again read, as amended.

The further consideration of paragraph 245 is postponed.

Paragraph 246 is again read.

It is moved by the Marquess of Linlithgow. Page 148, line 9, to leave out ("the") and to insert ("His Majesty's").

The same is agreed to.

Paragraph 246 is again read, as amended. The further consideration of paragraph 246 is postponed.

Paragraphs 247 to 249 are again postponed.

Paragraph 250 is again read.

It is moved by the Marquess of Linlithgow. Page 150, lines 3 to 5, to leave out from ("be") in line 3 to ("(the") in line 5 and to insert ("preferable" to leave the actual periods indicated above, which the White Paper proposes "should be 3 and 7 years, to be determined by Order in Council, in the light "of circumstances at the time, rather than to fix them by Statute").

The same is agreed to.

Paragraph 250 is again read, as amended. The further consideration of paragraph 250 is postponed.

Paragraphs 251 to 258 are again postponed,

Paragraph 259 is again read.

It is moved by the Marquess of Linlithgow. Page 152, line 39, after ("Federal") to insert ("Ministry").

The same is agreed to.

Paragraph 259 is again read, as amended.

The further consideration of paragraph 259 is postponed.

Paragraph 260 is again read.

It is moved by the Marquess of Linlithgow. Page 153, line 25, to leave out "(" proposed for the ") and to insert (" during which it is proposed to defer " the full ").

The same is agreed to.

Paragraph 260 is again read, as amended. • The further consideration of paragraph 260 is postponed.

Paragraph 260A is read as amended and is as follows:-

260A. It will be convenient to refer here to the power which the States already possess to impose customs duties on their land Frontiers. It is greatly to be desired that States adhering to the Federation should, like the Provinces, accept the principle of internal freedom for trade in India and that the Federal Government alone should have the power to impose tariffs and other restrictions on trade. Many States, however, derive substantial revenues from customs duties at their frontiers on goods entering the State from other parts of India. These duties are usually referred to as internal custons duties, but in many of the smaller States are often more akin to octro id terminal taxes than to customs. In some of the larger States the right to impose these duties is specifically 11 limited by treaty. We recognise that it is impossible to deprive States of revenue upon which they depend for balancing their budgets and that they must be free to alter existing rates of duty to suit varying conditions. But internal customs barriers are in principle inconsistent with the freedom of interchange of a fully developed federation and we are strongly of the opinion that every effort should be made to substitute other forms of taxation for these internal customs. The charge must. of course, be left to the discretion of the States concerned as alternative sources of revenue become available. We have no reason for thinking that the States contemplate any enlargement of the general scope of their tariffs and we do not believe that it would be in their interest to enlarge it. But in any case we consider that the accession of a State to the Federation should imply its acceptance of the principle that it will not set up a barrier to free interchange so formidable as to constitute a threat to the future of the Federation; and, if there should be any danger of this, we think that the powers entrusted to the Governor-General in his discretion would have to be brought to bear upon the

It is moved by the Marquess of Linlithgow. Line 11, to leave out ("these duties") and to insert ("them").

The same is agreed to.

Paragraph 260A is again read, as amended.

The further consideration of paragraph 260A is postponed.

Paragraphs 261 to 267 are again postponed.

Paragraph 268 is again read.

It is moved by the Lord Rankellour. Page 156, lines 26 and 27, to leave out from ("enquiry") in line 26 to the end of the sentence in line 27.

The same is agreed to.

It is moved by the Lord Rankeillour. Page 156, line 29, to leave out ("such").

The same is agreed to.

Paragraph 268 is again read, as amended. The further consideration of paragraph 268 is postponed.

Paragraph 269 and 270 are again postponed.

Paragraph 271 is again read.

It is moved by the Marquess of Zetland. Page 157, line 40, to leave out (" Government") and to insert (" Governments").

The same is agreed to.

Paragraph 271 is again read, as amended.

The further consideration of paragraph 271 is postponed.

Paragraphs 272 to 278 are again postponed.

Paragraph 279 is again read.

It is moved by the Lord Eustace Percy. Page 160, line 8, after (" Paper ") to insert ("279A. In addition to these rights and safeguards common to all "members of the Public Services,").

The same is agreed to.

Paragraph 279 is again read, as amended.

The further consideration of paragraph 279 is postponed.

Paragraph 279A is read, as amended, and is as follows:—

"279A. In addition to these rights and safeguards common to all Condition of members of the Public Services, it is proposed that, after the commencement of the Act, the Secretary of State, who will continue to make the Secretary appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department, shall regulate the conditions of service of all persons so appointed, and it is intended that the conditions of service thus laid down shall in substance be the same as at present. The power to regulate the conditions of service of officers not appointed by the Secretary of State, on the other hand, has, since 1926, been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of Provincial Services, and the White Paper contains no provisions as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act."

It is moved by the Marquess of Linlithgow and the Lord Eustace Percy. To leave out paragraph 279A.

The same is agreed to.

Paragraphs 280 and 282 are again postponed.

It is moved by the Marquess of Linlithgow. Page 161, after paragraph 282, to insert the following new paragraph:-

("282A. It is proposed that, after the commencement of the Act, the Secretary of State, who will continue to make appointments to the Indian Civil Service, the Indian Police and the Ecclesiastical Department shall regulate the conditions of service of all persons so appointed, and it is intended that the conditions of service thus laid down shall in substance be the same as at present. The power to regulate the conditions of service of officers not appointed by the Secretary of State,

on the other hand, has, since 1926, been delegated to the Government of India in the case of the Central Services and to Provincial Governments in the case of Provincial Services, and the White Paper contains no provision as to the conditions of service to be applied to officers of these Services appointed after the commencement of the Constitution Act.")

The same is agreed to.

New paragraph 282A is again read. The further consideration of paragraph 282A is postponed.

Paragraphs 283 to 283B are again postponed.

Paragraph 283C is read, as amended, and is as follows:-

"283C. But, further than this, it will in our view be essential that the Central and Provincial Legislatures respectively should give general legal sanction to the status and rights of the Central and Provincial Services. The special responsibility of the Governor-General and Governors would of course in any case extend to securing the legitimate interests as well as the right of members of these Services; but it is on all grounds desirable that . . Executive Government as a whole should be authorised and required - law to give these Services the necessary security. The principal existing rights of members of these Services are set out in List II of Appendix VII of the White Paper. We think that the Legislatures, in passing Provincial Civil Service Acts authorising and requiring the Executive Government to give these Services the necessary security, would be well advised to consider whether, to meet the new conditions, List II of Appendix VII of the White Paper should be enlarged by appropriate additions from List I of the same Appendix, wherein are set out the principal existing rights of officers appointed by the Secretary of State. In our view the status and rights of the Central and Provincial Services should not be, in substance, inferior to the status and rights of persons appointed by the Secretary of State in regard to the two mean points covered by List I. These two points are firstly, protection against individual injury amounting to breach of contract and against individual unfair treatment through disciplinary action or refusal of promotion; and, secondly, protection against such arbitrary alterations in the organisation of the Services themselves as might damage the professional prospects of their members generally. On the first point, these Provincial Civil Service Acts could not, indeed, determine in detail the rates of pay, allowances and pensions, and the conditions of retirement of all civil servants, nor the procedure to be followed in considering their promotion on the one hand, or, on the other, their dismissal, removal, reduction or formal censure. Such Acts could, however, confer general powers and duties for these purposes on the Government, and in regard to promotions, they could provide definitely that canvasung for promotion or appointments shall disqualify the candidate, and that orders of posting or promotion in the higher grades shall require the personal concurrence of the Governor. On the second point, it is admittedly more difficult to give security to the Services as a whole in respect of their general organisation; yet the morale of any Service must largely depend upon reasonable prospects of promotion, and this must mean that there is a recognised cadre of higher-paid posts which, while naturally subject to modification in changing circumstances, will not be subject to violent and arbitrary disturbance. A Legislature does nothing derogatory to its own rights and powers if it confers upon

the Executive by law the duty of fixing such cadres and of reporting to the Legislature if any post in these cadres is at any time held in 45 abeyance')

It is moved by Mr Cocks, Mr Attlee, Mr Morgan Jones, and the Lord Snell Lines 10 to 45, to leave out from ("Paper") in line 10, to the end of the paragraph and to insert ('The continuance in full of these rights is "secured under the White Paper proposals")

The same is disagreed to.

Paragraph 283C is again read.

The further consideration of paragraph 283C is postponed.

Paragraphs 283D to 292 are again postponed.

Paragraph 293 is again read.

It is moved by the Viscount Halifax. Page 166, lines 7 and 8, to leave out (" the political side of the Department') and to insert ("both")

The same is agreed to

It is moved by the Viscount Halifax Page 166, lines 9 and 10, to leave out ("in that Department") and to insert ("on the internal side"),

The same is agreed to

Paragraph 293 is again read, as amended. The further consideration of paragraph 293 is postponed.

Paragraphs 294 to 304 are again postponed.

Paragraph 305 is again read, as amended, and is as follows -

"305 In so far as the apprehension may be that a temporary deficiency No special in the cash required to meet such current obligations as the issue of provision required. monthly pay might occur, not through any failure in the annual revenues, but through excessive commitments in other directions, the good sense of the Government, and the advice of a strong Finance Department. must in our opinion be relied on as the real safeguard. Nor must it be forgotten that, although a Governor will not have a special responsibility for safeguarding the financial stability and credit of the Province, it will most certainly be his duty to see that he has information furnished to him which would enable him to secure such financial provision as may be required for the discharge of his other special responsibilities, including of course his pecial responsibility for safeguarding the legitimate interests of the Survices If need arose for the Governor to take special steps for the purpose, in virtue of his special responsibilities, it would, of course. be open to him to adopt whatever means were most appropriate in the circumstances, and, if necessary, to meet the situation by borrowing. The powers available to him personally in this respect would be identical with those available to the provincial Government It he should seek assistance from the Federal Government in the form of a loan his application would be governed by the provision relating to provincial 21 borrowing which we have already advocated 1

It is moved by the Lord Rankeillour Line 21, at the end to insert (" the Governor General will of course be responsible for securing the interest of officers serving at the centre")

The same is agreed to.

Paragraph 305 is again read, as amended the further consideration of paragraph 305 is postponed

Paragraph 306 is again read, as amended, and is as follows -

"306 We have said that no distinction can, or ought to be, drawn between the claim of the various classes of officers serving in a Province for the due payment of their emoluments but to this general statement of principle we think that there should be one qualification. If difficulties should unfortunately arise in regard to a claim to pension by an officer appointed by the Secreatry of State who has served from time to time in different Provinces, we think that it would be unreasonable that he should have to make his claim against a number of authorities in respect of different portions of his pension. We therefore approve the proposal in the White Paper that the claims of all officers appointed by the Secretary of State for their pensions should be against the Federal Government direct the necessary adjustments being made subsequently between the Federal Government in the Province or Provinces concerned, and, if that recommendation is adopted, we think that officers appointed by the Secretary of State need have no anxiety regarding the regular and punctual payment of their own pensions and those of their dependents Existing rights of suit against the Secretary of State will be preserved "

It is moved by Sir Reginald Craddock Line 16, after ('dependents") to insert ('Pensions of retired officers, if appointed before the commencement of the Constitution Act, and the pensions of their dependents will be exempt from Indian taxation if the pensioner is residing permanently outside India The pensions of officers, appointed by the "Secretary of State, or by the Crown after that date, and the pensions of their dependents will also be exempt from Indian taxation if the pensioner is residing permanently outside India )

The same is agreed to

Paragraph 306 is again read, as amended The further consideration of paragraph 306 is postponed.

It is moved by the Lord Eustace Percy Page 170, after paragraph 306, to insert the following new paragraph —

("306A We should not, however wish to leave this subject without making a general statement in regard to the pensions of these officers. These pensions, like the pensions of all retired members of the Public Services of India, are a charge upon the revenues of India, and there can be no more binding obligation resting upon the Government of India than to meet this charge in full and ungrudgingly. But though we do not doubt that it will be so met, the obligation rests not only upon the Government of India to meet it but also upon His Majesty's Government to see that it is so met. His Majesty's Government have, in fact, pledged the revenues of India for this purpose and it is their duty to see that that pledge is made effective. The Governor General must, therefore, be armed with full powers to meet the liabilities thus secured upon the revenues of India and our approval of the proposals of the White Paper is based on the understanding that the Constitution Act will, in fact, arm him with such powers")

The same is agreed to

New paparagraph 306A is again read. The further consideration of paragraph 306A is postponed.

Paragraph 307 is again read, as amended, and is as follows :-

"307. There is, however, one category of pension payments which Family Provides Francisco Families stands apart from the rest, namely, the pensions payable to families of officers, tivil and military, the cost of which is met not from the revenues of India but from funds accumulated by means of subscriptions paid by the officers themselves. These accumulated funds are in equity the property of the subscribers, and we think it right that the fullest possible consideration should be given to their views as to the disposal of the money. A full account of the nature of the Funds and of the steps taken to ascertain the views of subscribers is given in a Note by the Secretary of State for India which is printed in the Committee's Records.4 The Note also contains in some detail proposals for meeting the subscribers' wishes. We recommend that His Majesty's Government should take action on the lines indicated in this Note.

It is moved by the Lord Hardinge of Penshurst. Lines 5 to 8, to leave out from ("themselves.") in line 5 to ("A") in line 8 and to insert ("These accumulated funds are in equity the property of the subscribers "of which the British Government are, from the nature of the history of "the case, quasi-trustees, and constitute an equitable charge on the "revenues of the Government of India. We think it right that the fullest possible consideration should be given to the views of the contributors "as to the disposal of their money.")

The consideration of the above amendment is postponed.

The further consideration of paragraph 307 is postponed till to-morrow.

Paragraph 308 to 310 are again postponed.

Paragraph 311 is again read.

It is moved by the Marquess of Zetland. Page 173, lines 3 and 4, to leave out from the first (" a ") in line 3 to the end of line 4 and to insert (" Federal " Unit or between Federal Units").

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 173, line 9, to leave out ("But") and to insert ("For that reason,") and after ("that") to insert (", where the parties are Units of the Federation or the Federation itself,"). The same is agreed to.

It is moved by the Lord Eustace Percy. Page 173, lines 12 to 15, to leave out from ("Legislature") in line 12 to the end of the paragraph. The same is agreed to.

Paragraph 3f1 is again read, as amended.

The further consideration of paragraph 311 is postponed.

Paragraph 312 is again read.

It is moved by the Lord Eustace Percy. Page 173, line 24, after ("laws,") to insert (" It is essential that there should be some authoritative tribunal in "India which can secure a uniform interpretation of federal laws throughout "the whole of the Federation".)

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, lines 39 and 40. to leave out from ("kind") in line 39 to the end of the sentence.

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, lines 41 and 42, to leave out ("can only arise") and to insert ("arises").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, line 44, to leave out (" It is, however ") and to insert (" This being so, and since it is "). The same is agreed to.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 173, line 46, to page 174, line 3, to leave out from ("from") in line 46, page 173, to the end of the paragraph and to insert ("We think the position of the States would be appropriately safeguarded if it were provided that the granting of leave to appeal hy the Federal Court were in the form of Letters of Request, "directed to the Ruler of the State to be transmitted by him to the Court "concerned.")

The same is agreed to.

Paragraph 312 is again read, as a mended.

The further consideration of paragraph 312 is postponed.

Paragraphs 313 to 315 are again postponed.

Paragraph 316 is again read.

It is moved by the Lord Eustace Percy. Page 175, line 38, after (" Federal ") to insert (" cases,").

The same it agreed to.

Paragraph 316 is again read, as amended.

The further consideration of paragraph 316 is postponed.

Paragraph 317 is again read, as amended, and is as follows:--

"317. The Supreme Court under the White Paper proposals would, however, as we have said, have jurisdiction to hear certain criminal appeals from British India. We are satisfied that these would be so numerous that, if the Federal Court were given the extended jurisdiction which we have sufficient at increase in the uninger of Innies would be required in excess of anything which we should be willing to contemplate. The question then arises whether the Federal Legislature should be empowered, if and when they thought fit, to set up a separate Court of Criminal Appeal for British India, sub-ordinate to the Federal Court. After careful consideration we have come to the conclusion that a Court of Criminal Appeal is not required in India. Nearly every case involving a death sentence is tried in a District Court, from which an appeal lies to the High Court, and, apart from this, no death sentence can be carried out until it has been confirmed by the High Court. Only three of the High Courts (excluding Rangoon) exercise an original criminal jurisdiction, and though there is no further appeal from these Courts, every prisoner under sentence of death can appeal for remission or commutation of sentence to the Provincial Government and after that to the Governor- 18 General in Council or, if he wishes, can ask for special leave to appeal 19 to the Privy Council. In these circumstances, the rights of a condemned man seem to be very fully safeguarded, and we think that no good purpose would he served by adding yet another Court to which appeals can be brought."

It is moved by Sir Samnel Hoare and Mr. Butler. Lines 18 and 19, to leave out ("and after that to the Governor-General in Council").

The same is agreed to.

It is moved by Sir Samuel Hoare and Mr Butler. Line 23, at the end to insert (" We should add that at present under the Criminal Procedure. "Code, a condemned prisoner can apply for commutation of his sentence " not only to the provincial Government but also to the Governor-General "in Council We think that under the new Constitution the determination " of applications for commutation or remission of sentence under s 401 of "the Code should rest with the authority primarily responsible for the "preservation of Law and Order, namely, the provincial Government, and " that the Federal Government, that is to say the Governor-General acting " on the advice of his Ministers, as the successor of the Governor-General "in Council should no longer possess this statutory power or commuting "or remitting sentences At the same time, we are reluctant to diminish "the opportunities for appeal which are at present enjoyed under the "Indian Law, and we recommend that the power now exercisable in this "respect by the Governor-General in Council should henceforth vest in "the Governor-General acting in his discretion, to whom, in addition, "there will, we assume, be delegated as at present the prerogative power " of pardon ")

The same is agreed to

Paragraph 317 is again read, as amended The further consideration of paragraph 317 is postponed.

Paragraph 318 is again read

It is moved by the Marquess of Linhthgow. Page 176, line 40, after "that ") to insert ("this ") The same is agreed to

Paragraph 318 is again read, as amended. The further consideration of paragraph 318 is postponed.

Paragraphs 319 and 319A are again postponed

Paragraph 320 is again read

Page 177, line 47, after ("reserve") It is moved by the Marquess of Zetland to insert (" for the signification of His Majesty's pleasure").

The same is agreed to

Paragraph 320 is again read, as amended.

The further consideration of paragraph 320 is postponed.

Paragraph 320A is read, as amended, and is as follows:-

"320A We think it desirable to explain the general effect of our Future recommendations upon the High Courts Their constitution will, as position of at present, he laid down in the Constitution Act and the appointments High Counts to them will remain with the Crown the Constitution Act will, more-over, itself regulate more precisely than at present the nature and extent of the superintendence to be exercised by a High Court over the Subordinate Courts of the Province—the nature and extent, in fact, of what may be described as their administrative jurisdiction No change will be made in their relations with the Provinces in regard to the administrative questions affecting their establishment and huildings, except that the Calcutta High Court will henceforth have relations in these respects with the Bengal Government direct and not, as at present, with the Central Government (which, even as matters stand, naturally consults the Bengal Government upon any proposals

made before it by the Court): but the supply required by the High Court will be determined by the Governor after consultation with his Ministers, and will not be subject to the vote of the Provincial Legislature. As regards the juridical jurisdiction of the High Courts, in so far as this depends—as it mainly does depend—upon provisions of Indian enactments, it will henceforth be determined by enactments of that Legislature which is competent to regulate the subject in respect of which questions of the High Court's jurisdiction arise: that is to say, it will be for the Federal Legislature alone to determine the jurisdiction of the High Court in respect of any matter upon which that Legislature has exclusive power to legislate, for the Provincial Legislature to determine the jurisdiction of its High Court in respect of any exclusively provincial subject, and for both to determine (subject to the principles governing legislation in the concurrent field) in respect of any matter on which both Legislatures are competent to legislate. It will thus be seen that the High Courts, under our proposals, will be institutions which will not accurately be described as either federalised or provincialised. They will form an integral part of the constitutional machinery and 32 the various aspects of their activities as such will be regulated by the authority appropriate for the purpose."

It is moved by the Lord Rankeillour. Lines 32 to 34, to leave out from the beginning of line 32 to the end of the paragraph.

The same is agreed to.

Paragraph 320A is again read, as amended.

The further consideration of paragraph 320A is postponed.

It is moved by the Lord Rankeillour. After paragraph 320A to insert the following new paragraph:—

("320B. In concluding this portion of our Report, we desire to call attention to the importance of safeguarding the judiciary, from criticism in the legislatures of their conduct, in the discharge of their duties. The rule and practice of Parliament protect the judiciary from such criticism in this country, and, we recommend that adequate provision should be made to safeguard judges in India.")

The same is agreed to

New Paragraph 320B is again read.

The further consideration of paragraph 320B is postponed.

Paragraph 321 to 323 are again postponed.

Paragraph 324 is again read.

It is moved by the Lord Rankeillour. Page 179, lines 26 and 27, to left out ("after consultation with") and to insert ("with the assent of").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 324 is again read.

The further consideration of paragraph 324 is postponed.

Paragraphs 325 to 327 are again read.

Paragraph 328 is again read, as amended, and is as follows:-

"328. But in making our recommendations to this end, we wish to make it clear at the outset that we contemplate no measure which would interfere with the position attained by India as an integral part of the British Empire through the Fiscal Convention. Fears have, indeed,

been expressed lest the exercise of powers by the Indian Legislature which the Convention contemplated might result in the imposition of penal tariffs on British goods or in the application to them of penally restrictive regulations with the object not of fostering Indian trade, but of injuring and excluding British trade The answer to these fears is that the Convention could never, in fact, have been applied in aid of such a policy, and we have heen assured by the Indian Delegates that there will be no desire in India to utilise any powers they may enjoy under the new Constitution for a purpose so destructive of the conception of partnership upon which all our recommendations are hased But, if this be so, it would be clearly of great advantage to allay the fears of which we have spoken by a declaration through and under the Constitution Act of the principles governing the relations between the two The machinery of the Governor General's special responsihilities, supplemented by his Instrument of Instructions, offers India and the United Kingdom the opportunity of making such a declaration of principles, while at the same time ensuring the necessary flexibility in their interpretation and application "

It is moved by the Lord Eustace Percy. Lines 5 and 6, to leave out from "exercise") in line 5 to ("might") in line 6 and to insert (" hy the Indian Legislature of the powers contemplated in the Convention "). The same is agreed to.

Paragraph 328 is again read, as amended The further consideration of paragraph 328 is postponed.

## Paragraph 329 is read, as amended, and is as follows --

329 We therefore recommend that to the special responsibilities of Governorthe Governor-General enumerated in the White Paper there should be added a further special responsibility defined in some such terms as follows -"The prevention of measures, legislative or administrative, which would subject British goods, imported into India from the United 6 Kingdom, to discriminatory or penal treatment" But, as it is important that the scope which we intend to be attached to the But, as it is special responsibility so defined should be explained more exactly than could conveniently be expressed in statutory language, we further recommend that the Governor General's Instrument of Instructions should give him full and clear guidance. It should be made clear that the imposition of this special responsibility upon the Governor-General is not intended to affect the competence of his Government and of the Indian Legislature to develop their own fiscal and economic policy, that they will possess complete freedom to negotiate agreements with the United Kingdom or other countries for the securing of mutual tariff concessions. and that it will be his duty to intervene in tariff policy or in the negotiation or variation of tariff agreements only if in his opinion the intention of the policy contemplated is to subject trade between the United Kingdom and India to restrictions conceived not in the economic interests of India hut with the object of injuring the interests of the United Kingdom It should further he made clear that the "discriminatory or penal treatment" covered by this special responsibility includes both direct discrimination (whether hy means of differential tariff rates or by means of differential restrictions on imports) and indirect discrimination by means of differential treatment of various types of products, and that the Governor-General's special responsibility could also be used to prevent the imposition of prohibitory tariffs or restrictions, if he were satisfied that such measures were proposed with the intention already described In all these respects, the words would cover measures which, though not discriminatory or penal in form, would be so in fact "

have a special responsibility

It is moved by Sir Samuel Hoare and Mr. Butler. Line 6, after ("treat-"ment") to insert reference to a footnote and to insert as the footnote ("1 See also infra Paragraph 443A.")

The same is agreed to.

Paragraph 329 is again read, as amended. The further consideration of paragraph 329 is postponed.

Paragraphs 329A to 330 are again postponed.

Paragraph 331 is again read.

It is moved by Sir John Wardlaw-Milne. Page 182, line 45, to page 183, line 6, to leave out from ("it.") in line 45, page 182, to ("Lastly") in line 6, page 183, and to insert ("Secondly we are of opinion that these arrangements "can only be extended to include the relations between India and other "parts of His Majesty's Dominions by mutual agreement.")

The same is agreed to.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 183, lines 6 and 7, to leave out from ("that") in line 6 to ("any") in line 7.

The amendment, by leave of the Committee, is withdrawn,

Paragraph 331 is again read, as amended.

The further consideration of paragraph 331 is postponed.

Paragraph 332 is again read.

It is moved by Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 183, lines 10 to 21, to leave out from ("opinion") in line 10 to the end of the paragraph and to insert ("that the consent of the Governor-General "given in his discretion should be required to the introduction in the Federal "or Provincial Legislatures of any measure of the discriminatory nature "referred to in Proposals 122 and 123 of the White Paper.").

The amendment, by leave of the Committee, is within and.

Paragraph 332 is again read.

The further consideration of paragraph 332 is postponed.

Paragraphs 333 to 337 are again postponed.

Paragraph 338 is read, as amended and is as follows:-

inatory though onn. "338. But it will be the duty of the Governor-General and of the Governors to exercise their discretion in giving or withholding their assent to Bills. And we think that the Instrument of Instructions should make it plain, as we have already indicated in connexion with the Governor-General's special responsibility in relation to tariffs, that it is the duty of the Governor-General and of the Governors in exercising their discretion in the matter of assent to Bills not to teel themselves bound by the terms of the statutory prohibitions in relation to discrimination but to withhold their assent from any measure which, though not in form discriminatory, would in their judgment have a discriminatory effect. We have made, we hope, sufficiently plain the scope and the nature of the discrimination which we regard it as necessary to prohibit, and we have expressed our belief that statutory prohibitions should be capable of being so framed as generally to secure what we have

in view. We are conscious, however, of the difficulty of framing completely watertight prohibitions and of the scope which ingenuity may find for complying with the letter of the law in a matter of this kind while violating its spirit. It is, in our view, an essential concomitant of the stage of responsible government which our proposals are designed to secure that the discretion of the Governor-General and of the Governors in the granting or withholding of assent to all Bills of their Legislature should be free and unfettered; and in this difficult matter of discrimination in particular we should not regard this condition es fulfilled if the Governor-General and Governors regarded the exercise of their discretion as restricted by the terms of the statutory prohibitions. We further recommend that the Instrument of Instructions of the Governor-General and the Governor should require him, if in any case he feels doubt whether a particular Bill does or does not offend against the intentions of the Constitution Act in the matter of discrimination, to reserve the Bill for the signification of His Majesty's pleasure. We need hardly add that the effect of our recommendations for the statutory prohibition of certain specified forms of discrimination would lay open to challenge in the Courts as being ultra vires any legislative enactment which is inconsistent with these prohibitions, even if the Governor-General or 35 the Governor has assented to it.

It is moved by the Viscount Halifax. Line 16, to leave out (" may ") and to insert (" might ").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Line 35, after ("it") to insert ("except in a case where the Governor-"General or Governor has declared in his discretion that the enactment is " necessary in the interests of the peace and tranquillty of India (or a Province, "as the case may be) or any part thereof.")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 338 is again read, as amended. The further consideration of paragraph 338 is postponed.

Paragraphs 339 to 342 are egain postponed.

Paragraph 343 is again read.

It is moved by Sir Samuel Hoare on behalf of the Marquess of Zetland. Page 188, lines 46 end 47, to leave out ("themselves") and to insert (" himself ").

The same is agreed to.

Paragraph 343 is again resd, as amended. The further consideration of paragraph 343 is postponed.

Paragraphs 344 to 347 are again postponed.

Paragraph 348 is egain read, as amended, and is as follows:-

"348. Among the proposals in the White Paper is one which would English for holding put it beyond the power of any Legislature in British India to make laws (with certain exceptions) subjecting any British subject to any disability or discrimination in respect of a variety of specified matters, if based upon religion, descent, caste, colour or place of birth. This proposal seems to us too wide and likely to fetter unduly the powers of the Indian Legislatures; and we understand that His Majesty's Government have, after consultation with the Government of India, arrived at the same conclusion. We agree that some declaration of the general rights of British subjects in India is required, but we think that it would

be preferable to base it upon the existing section of the Government of India Act. We think that this declaration should provide that no British subject, Indian or otherwise, domiciled in India shall be disabled from holding public office or from practising any trade, profession or calling by reason only of his religion, descent, caste, colour or place of birth, 15 and it should be extended, as regards the holding of office under the Federal Government, to subjects of Indian States

"The proposal in the White Paper, however, goes on to say that 18 'no law will be deemed to be discriminatory for this purpose on the ground only that it prohibits either absolutely or with exceptions the sale or mortgage of agricultural land in any area or to any person not belonging to some class recognised as being a class of persons engaged in, or connected with, agriculture in that area, or which recognises the existence of some right, privilege or disability attaching to members of a community by virtue of some privilege, law or custom having the form of This proviso is intended to cover legislation such as the Punjab Land Alienation Act, which is designed to protect the cultivator against the money lender. This is no doubt a desirable object. Inasmuch, however, as the full effect of the proviso cannot be foreseen and may have the result that the legitimate interests of minorities may be impaired while they are denied the right of appeal to the Courts for redress, we think that in cases where the legitimate interests of minorities may be adversely affected and access to the courts is barred by this proviso in the constitution, the Governor should consider whether his special responsibility for the protection of minorities necessitates action on his part "

It is noved by the Lord Eustace Percy. Lines 6 and 7, to leave out from ("wide") in line 6 to ("and") in line 7.

The same is agreed to.

It is moved by Mr Cocks, Mr. Attlee, Mr Morgan Jones, and the Lord Snell. Line 15, after ("his") to insert ("sex")

The same is disagreed to

It is moved by the Lord Eustace Percy Line 18, to leave out (' goes on to say") and to insert ("contains a proviso which would, in one "respect, still further limit the effect of this narrower declaration of "rights, namely")

The same is agreed to.

Paragraph 348 is again read, as amended.

The further consideration of paragraph 348 is postponed.

Paragraph 349 is again read.

It is moved by Sir Samuel Hoare and the Lord Eustace percy Page 191, to leave out paragraph 349 and to insert the following new paragraph —

("349 We think that some general provision should be inserted in the Constitution Act safeguarding private property against expropriation, in order to quiet doubts which have been aroused in recent years by certain Indian utterances. It is obviously difficult to frame any general provision with this object without unduly restricting the powers of the Legislature in relation particularly to taxation, in fact, much the same difficulties would be presented as those which we have discussed in an earlier paragraph in relation to fundamental rights. We do not attempt to define with precision the scope of the provision we have in mind, the drafting of which will require careful consideration for the reasons we have indicated but we think that it should secure that legislation expropriating, or authorising the expropriation of, the property of particular individuals should be lawful only if confined to expropriation

for public purposes and if compensation is determined, either in the first instance or on appeal, by some independent authority. General legisla-. tion, on the other hand, the effect of which would be to transfer to public ownership some particular class of property or to extinguish or modify the rights of individuals in it, ought, we think, to require the previous sanction of the Governor or Governor-General (as the case may be) to its introduction; and in that event he should be directed by his Instrument of Instructions to take into account as a relevant factor the nature of the provisions proposed for compensating those whose interests will be adversely affected by the legislation.")

> Lord Snell. Mr. Cocks,

Mr. Morgan Jones.

Not Contents (3).

Objected to.

On Question:--

Contents (18).

Marquess of Salisbury. Marquess of Linlithgow.

Earl Peel.

Viscount Halifax. Lord Middleton.

Lord Rankeillour.

Lord Hutchison of Montrose,

Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock.

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare.

Sir Joseph Nall.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

Earl Winterton.

The same is agreed to.

New Paragraph 349 is again read.

The further consideration of paragraph 349 is postponed.

Paragraph 349A is again read, as amended, and is as follows:-

"349A. But there is another form of private property—perhaps more accurately described as "vested interest"—common in India which we think requires more specific protection. We refer to grants of land or of tenure than tree of the common of of tenure of land free of land revenue, or subject to partial remissions land revenue. of land revenue, held under various names (of which Taluk, Inam. Watan, Jagir and Moafi are examples) throughout British India by various individuals or classes of individuals. Some of these grants date from Moghul or Sikh times and have been confirmed by the British Government: others have been granted by the British Government for services rendered. Many of the older grants are enjoyed by religious bodies and are held in the names of the managers for the time being. The terms of these grants differ: older grants are mostly perpetual, modern grants are mostly for three, or even two, generations. But, whatever their terms, a grant of this kind is always held in virtue of a specific undertaking given by, or on the authority of, the British Government that, subject in some cases to the due observance by the grantec of specified conditions, the rights of himself and his successors will be respected either for all time or, as the case may be, for the duration of the grant. A well-known instance of such rights is to be found in

those enjoyed by the present Talukdars of Oudh, who owe their origin to the grant to their predecessors of sanads by Lord Canning, the then Governor-General, conferring proprietary rights upon all those who engaged to pay the jumma which might then, or might from time to time subsequently, be fixed subject to loyalty and good behaviour, and the rights thus conferred were declared to be permanent, hereditary and transferable."

It is moved by Sir Samuel Hoare and Mr. Butler. Line 1 to leave out ("another") and to insert ("a").

The same is agreed to.

Paragraph 349A is again read, as amended.

The further consideration of paragraph 349A is postponed.

Paragraphs 349B to 350 are again postponed.

Paragraph 351 is again read.

It is moved by the Marquess of Linlithgow. Page 192, line 24, after " Federa"). "Federation") to insert (", States") and to leave out (" of Province and

The same is agreed to.

Paragraph 351 is again read, as amended.

The further consideration of paragraph 351 is postponed.

Paragraph 352 is again postponed.

Paragraph 353 is again read.

It is moved by the Marquess of Linlithgow. Page 193, line 19, to leave out (" three ") and to insert (" two ").

The same is agreed to.

Paragraph 353 is again read, as amended.

The further consideration of paragraph 353 is postponed.

Paragraph 354 is again read.

It is moved by the Marquess of Salisbury. Page 194, after line 14, at the end, to insert ("We think that the same method should be applied to the revision or adjustment of provincial boundaries.").

The same is agreed to.

Paragraph 354 is again read, as amended.

The further consideration of paragraph 354 is postponed.

Paragraph 355 is again read.

It is moved by the Marquess of Salisbury. Page 194, lines 19 to 25, to leave out from (" Parliament") in line 19 to the end of line 25.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 194, lines 28 to 30, to leave out from ("matters,") in line 28 to the end of the paragraph.

The same is agreed to.

Paragraph 355 is again read, as amended. The further consideration of paragraph 355 is postponed.

Paragraphs 356 to 363 are again postponed.

Paragraph 364 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 198, lines 40 to 42, to leave out from ("that") in line 40 to ("any") in line 42.

The amendment, by leave of the Committee, is withdrawn.

Paragraph 364 is again read.

The further consideration of paragraph 364 is postponed.

Paragraph 365 is again postponed.

Paragraph 366 is again read.

It is moved by Mr. Attice, Mr. Cocks, Mr. Morgan Jones, and the Lord Snell. Page 200, line 16, to leave out from ("foundation") to the end of the line.

The consideration of the said amendment is postpoued till to-morrow.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 200, lines 21 to 26, to leave out from ("Constitution") in line 21 to ("Reliance") in line 26, and to insert ("We understand that it is expected that, in the absence of "unforeseen developments, it will be possible for the Bank to be constituted "and to start its operations during the course of next year.")

The same is agreed to.

The further consideration of paragraph 366 is postponed till to-morrow.

Ordered that the Committee be adjourned till to-morrow at Three o'clock.

#### Die Jovis 11° Octobris 1984

#### Present :

LORD ARCHBISHOP OF CANTERBURY. MR. ATTLEE. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL PEEL. VISCOUNT HALIFAX. LORD MIDDLETON. LORD HARDINGE OF PENSHURST. LORD SNELL.

LORD RANKBILLOUR. LORD HUTCHISON OF MONTROSE. MR. BUTLER. MAJOR CADOGAN.

SIR AUSTEN CHAMBERLAIN.

Mr. Cocks.

SIR REGINALD CRADDOCK.

Mr. DAVIDSON. SIR SAMUEL HOARE. Mr. Morgan Jones. SIR JOSEPH NALL.

LORD EUSTACE PERCY. SIR JOHN WARDLAW-MILNE.

EARL WINTERTON.

THE MARQUESS OF LINLITHGOW in the Chair.

The Order of Adjournment is read. The Proceedings of yesterday are read.

Paragraphs 367 to 453 are again postponed.

Paragraphs 1 to 22 are again postponed.

Paragraph 23 is again read.

It is moved by the Lord Eustace Percy. Page 14, line 46, to leave out the second (" and ") and to insert a full stop.

The same is agreed to.

It is moved by the Lord Eustace Percy. Page 14, line 47, after (" Governor ") to insert (" and so strongly have we been impressed by the need for this power, " and by the importance of ensuring that the Governor shall be able to exercise "it promptly and effectively, that, among other alterations in the White "Paper, we have felt obliged to make a number of additional recommendations "in regard to the Governor's sources of information, the protection of the " police and the enforcement of law and order ").

The same is agreed to.

Paragraph 23 is again \_ead, as amended.

The further consideration of paragraph 23 is postponed,

Paragraphs 24 and 25 are again postponed.

All amendments are to the Draft Report (vide supra paras. 1-42B, pp. 470-491; and paras. 42-453, pp. 64-258) and NOT to the Report as published (Vol. I, Part I). A Key is attached (see p. 627 et seq.), showing on which pages of the Proceedings amendments to each paragraph can be found.

Paragraph 26 is again read.

It is moved by the Lord Enstace Percy. Page 16, line 16, after ("India"). to insert (" We have devoted particular attention to the form of the Central Legislature and shall have to recommend the substitution of an alternative "scheme for the White Paper proposals").

The same is agreed to.

Paragraph 26 is again read, as amended. The further consideration of paragraph 26 is postponed.

Paragraphs 27 to 30 are again postponed.

Paragraph 31 is again read.

It is moved by the Lord Eustace Percy. Page 19, line 1, after ("trade") to insert ("The rights of the States in this respect cannot be aholished, hut, "as we shall indicate in paragraph 262, moderation in the use of them can " be made a condition of federation ".)

The same is agreed to.

Paragraph 31 is again read, as amended.

The further consideration of paragraph 31 is postponed.

Paragraphs 32 to 70 are again postponed.

Paragraph 71 is read, as amended, and is as follows:-

"71. We have already pointed out that, in the present Government Relations of India Act, there is a provision which requires the Governor to be Governor guided by the advice of his Ministers in all matters relating to transferred subjects, unless he sees sufficient cause to dissent from their opinion. The White Paper, as we read it, does not propose that the Constitution Act itself shall contain any provisions on this subject. The Act will commit certain matters to the Governor's sole discretion. such, for instance, as his power of veto over legislation and the regulation of matters relating to the administration of excluded areas. It will also contain a declaration that certain special responsibilities are to rest upon the Governor. For the rest, it will provide that the Governor shall have a Council of Ministers to aid and advise him, but his relations with his Ministers are left to be determined wholly by the Instrument of Instructions. We agree that it is desirable that the Governor's special responsibilities, over and above the matters which are committed to his sole discretion, should he laid down in the Act itself rather than that they should he left to be enumerated thereafter in the Instrument of Instructions. In the first place, Indian public opinion will thereby be assured that the discretionary powers of the Governor to dissent from his Ministers' advice is not intended to he unlimited; and, secondly, the right will thereby be secured to Parliament to consider and debate the scope of the Governor's powers before the Constitution Bill passes 22

finally from their control. On the other hand, we agree that it would be 23 undesirable to seek to define the Governor's relations with his Ministers by imposing a statutory obligation upon him to be guided by their advice, since to do so would be to convert a constitutional convention into a rule of law and thus, perhaps, to bring it within the cognisance of the

It is moved by the Lord Eustace Percy. Lines 22 and 23, to leave out from ("powers") in line 22, to ("On") in line 23, and to insert ("during the "passage of the Constitution Bill itself")
The same is agreed to.

It is moved by the Lord Eustace Percy. Line 28, at end to insert "We do not, however, think that the inherent legal power of the "Governor (to which we have referred in paragraph 72) to act npon his "own responsibility is set forth with sufficient clearness in proposals "70-73 of the White Paper, and we recommend that it should be more " explicity defined ").

The same is agreed to.

Paragraph 71 is again read, as amended.

The further consideration of paragraph 71 is postponed.

Paragraphs 72 to 135 are again postponed.

Paragraph 136 is again read.

It is moved by Sir Reginald Craddock. Page 67, line 17, at the end to insert ("We desire to add in this connection that it would, in our opinion, be unwise to abandon, as the White Paper proposes, the disqualification for candidature for a legislative body which under existing Rules follows (subject "to a dispensing power) upon conviction for a criminal offence involving a sentence of imprisonment exceeding one year.")

The same is agreed to.

Paragraph 136 is again read, as amended.

The further consideration of paragraph 136 is postponed.

New Paragraph 136A is again read. It is moved by Sir Reginald Craddock to leave out paragraph 136A.

The same is agreed to.

Paragraphs 137 to 306 are again postponed.

Paragraph 307 is again considered.

It is moved by the Lord Hardinge of Penshurst. Page 170, to leave out

paragraph 307 and to insert the following new paragraph:--

(" 307. One category of pension payment stands in so special a position as to demand separate consideration. We refer to the pensions payable . to families of officers, civil and military, the cost of which is met not from the revenues of India but from credits accumulating in the balances of the Government of India from subscriptions paid by the officers themselves. The Government of India are trustees of these credits and the fullest possible consideration should be given to the views of the subscribers and beneficiaries as to the future administration of the trust. A note by the Secretary of State for India which is printed in the Committee's records contains full particulars of these credits and the steps already taken to ascertain the views of subscribers. The note also contains in outline proposals for the consideration of subscribers and pensioners. The matters to be decided are technical and complicated; and we hope therefore in consulting subscribers that every effort will be made to put the issues before them in the clearest possible way. We are glad to observe from paragraph 8 of the Note that the Secretary of State hopes that, unless the present financial situation unexpectedly

deteriorates, it will be possible to convert existing rupee credits in India into sterling funds held in this country within quite a short period after the Constitution Act is passed and the wishes of subscribers and pensioners are known. We recommend that this should be done and that action should be taken generally on the lines indicated in the Note.")

The same is agreed to.

New paragraph 307 is again read.

The further consideration of paragraph 307 is postponed.

Paragraphs 308 to 340 are again postponed.

Paragraph 341 is again read.

It is moved by Mr. Butler. Page 187, lines 6 and 7, to leave out ("provision" be made enabling ").

The same is agreed to.

Paragraph 341 is again read, as amended.

The further consideration of paragraph.341 is postponed.

Paragraphs 342 to 365 are again postponed.

Paragraph 366 is again considered.

The motion of Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 200, line 16, to leave out from ("foundation") to the end of the line is again considered.

Objected to.

On Question:-

Contents (4).

Lord Snell. Mr. Attlee.

Mr. Cocks.

Mr. Morgan Jones.

Not Contents (16).

Lord Archbishop of Canterbury.
Marquess of Salisbury.
Marquess of Zetland.
Marquess of Linlithgow.

Marquess of Reading.
Viscount Halifax.
Lord Middleton.

Lord Hardinge of Penshurst. Lord Rankeillour.

Lord Hutchison of Montrose.

Lord Flutchison of Montaose

Mr. Butler. Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock. Sir Samuel Hoare.

Sir John Wardlaw-Milne.

The Earl of Derby and the Earl Winterton did not vote.

The said amendment is disagreed to.

Paragraph 366 is again read.

The further consideration of paragraph 366 is postponed.

Paragraph 367 is again read.

Mr. Morgan Jones, Mr. Attlee, Mr. Cocks, and the Lord Snell. Page 200, line 45, after ("discretion.") to insert ("The Governor, Deputy Governor and "four Directors of the Bank should be selected by the Governor-General "in consultation with his Ministers.")

The same is disagreed to.

Paragraph 367 is again read.

The further consideration of paragraph 367 is postponed.

Paragraph 368 and 369 are again postponed.

Paragraph 370 is sgain read.

It is moved by the Marquess of Linlithgow, the Lord Eustace Percy, and Sir John Wardlaw-Milne. Page 202, lines 10 to 14, to leave out sub-section (f). The same is agreed to.

Paragraph 370 is again read, as amended.

The further consideration of paragraph 370 is postponed.

Paragraph 370A is read, as amended and is as follows:-

"370A. We attach special importance to the arbitration procedure mentioned above as a means of settling disputes on administrative issues between the Railway Authority and the Administrations of railways owned and worked by an Indian State. The Constitution Act should contain adequate provision to ensure reasonable facilities for the State's railway traffic and to protect its system against unfair or uneconomic competition or discrimination in the Federal Legislature. We consider that States owning and working a considerable railway system should be able to look to the arbitration machinery which we recommend for adequate protection in such matters. On the other hand, if any State is allowed to reserve, as a condition of accession, the right to construct railways in its territory notwithstanding Item (9) of the revised exclusive Federal List, their right to do so should be subject to appeal by the 13 Railway Authority to the same tribunal."

It is moved by the Marquess of Linlithgow. Line 13, to leave out (" their") and to insert (" its").

The same is agreed to.

Paragraph 370A is again read, as amended. The further consideration of paragraph 370A is postponed.

Appendix (iv) is again postponed.

Paragraphs 371 to 375 are again postponed.

Paragraph 376 is again read.

It is moved by the Lord Rankeillour. Page 210, line 36, after ("associations") to insert ("whose salary would not be votable and ").

The same is agreed to.

Paragraph 376 is again read, as amended.

The further consideration of paragraph 376 is postponed.

Paragraphs 377 to 379 are again postponed.

Paragrap 1 380 is read, as amended and is as follows :--

"380. As the High Commissioner will no doubt continue to serve Appointment 2 Provincial Governments as well as the Federal Government it seems to should be made by us inappropriate that the appointment should be made by the Governor-General acting solely on the advice of Federal Ministers. We recommend discretion. accordingly that the appointment of High Commissioner should be made by the Governor-General in his discretion after consultation with his Ministers. It may be that some of the States which accede to the Federation would also find it useful to employ the agency of the High Commissioner for some purposes, and we consider that it should be open to them to do so."

It is moved by Sir Samuel Hoare and Mr. Butler. Line 2, after ("Government") to insert (", and as in any case he will be acting "under the orders of the Governor-General in matters arising out of "the Reserved Departments,").

. The same is agreed to.

Paragraph 380 is again read, as amended. The further consideration of paragraph 380 is postponed.

Paragraph 381 is again postponed.

Paragraph 382 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 213, line 6, after ("Federation") to add ("although we consider that this interval should not be longer than is necessitated by administrative " considerations.")

The same is agreed to.

Paragraph 382 is again read, as amended.

The further consideration of paragraph 382 is postponed.

Paragraphs 383 and 384 are again postponed

Paragraph 385 is again read.

It is moved by the Lord Rankeillour. Page 214, line 22, to leave out "Federal") and after ("Court") to insert ("with the same powers in this sphere as it is proposed to confer on the Federal Court ").

The same is agreed to.

Paragraph 385 is again read, as amended.

The further consideration of paragraph 385 is postponed.

Paragraph 386 and 387 are again postponed.

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Paragraph 388 is again read

It is moved by Sir John Wardlaw-Milne on behalf of the Lord Eustace Percy Page 216, line 23, to leave out (" part") and insert (" section ")

The same is agreed to

Paragraph 388 is again read, as amended.

The further consideration of paragraph 388 is postponed

Paragraph 389 is again read

It is moved by the Marquess of Linlithgow Page 216, line 39, to leave out (" 142 000') and to insert ('136,000')

The same is agreed to.

It is moved by the Marquess of Linlithgow Page 216, line 40 after ("other") to insert ("existing")

The same is agreed to.

It is moved by the Marquess of Linlithgow Page 216, line 42, to leave out ("49 000") and to insert ("55,000") and to leave out ("13,000") and to insert ('14 000")

The same is agreed to.

Paragraph 389 is again read, as amended The further consideration of paragraph 389 is postponed

Paragraph 390 is again postponed

Paragraph 391 is read as amended, and is as follows -

"391 The steep and densely wooded mountains on the north and north-west of Burma, where it marches with Assam, Manipur, and Bengal, cut off access from India, and on the east, where its neighbours 3 are the Chinese province of Yunnan in the north, and Trench Indo China and Siam in the south, effectively prevent intercourse with adjacent countries save by a few difficult caravan routes Between continental 6 India and Burma intercourse is and must be wholly by sea, and Rangoon is 700 miles by sea, a forty-eight hours' voyage, from Calcutta, and 1 000 from Madras In these circumstances it is not surprising that the influence which Burma can exert on Indian political influence and the 10 interest which India generally feels in Burma's affairs are of the slightest; 11 and to this we should add that Buddhism being the prevailing religion, caste and communalism are unknown, though there are certain racial cleavages, and that the women of Burma are regarded socially and 14 politically as on an equality with men The Burmese language 1. spoken by the great majority of the inhabitants, though there are numerous local dialects Of the total population some 10,000 000 are Burmans, 1,250,000 Karers and 1,000,000 Shans inhabiting for the most part the frontier tracts, and of the non-indigenous races the most numerous are Indians, who number approximately 1,000,000 "

It is moved by Sir John Wardlaw-Milne Lines 3 to 6, to leave out from ("and") in line 3, to the end of the sentence in line 6, and to meert ("while on the east, where its neighbours are the Chinese province "of Yunnan in the north and French Indo China and Siam in the "south, intercourse with adjacent countries is only possible by means "of a few difficult caravan routes")

The same is agreed to

. It is moved by the Marquess of Zetland. Line 10, to leave out ("influence") and to insert ("tendencies").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Lines 11 to 14, to leave out from ("slightest") in line 11 to the end of the sentence and to insert ("conditions in the two countries are in many respects markedly "different. Buddhirm to the countries are in many respects markedly different; Buddhism being the prevailing religion in Burma the "difficulties created in India by caste and the potential clash of religious "forces are hardly existent in Burma; but against this must be set the factor of another form of communalism based on racial cleavages. "Another notable point of difference is that the women of Burma are "regarded, socially and politically, as on an equality with men, to an " extent as yet rarely found in any part of India.") ·The same is agreed to.

Paragraph 391 is again read, as amended. The further consideration of pargaph 391 is postponed.

Paragraphs 392 to 399 are again postponed.

Paragraph 400 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 222, line 38, to leave out ("18") and to insert ("20").

The same is agreed to.

Paragraph 400 is again read, as amended.

The further consideration of paragraph 400 is postponed.

Paragraphs 401 and 404 are again postponed.

Paragraph 405 is read, as amended, and is as follows:-

405. An agreement of this kind embodied in the Constitution Act, Period during though mutually advantageous to the two countries, must necessary the facel liberty. even though mutually advantageous to the two countries, must necessarily constitute to some extent an encroachment upon the fiscal liberty which Burma after separation is to enjoy, and which India already enjoys. The encroachment would be less, if the agreement provided full opportunity to both parties to vary details by mutual consent during its currency; but it is in any event desirable that the agreement itself should continue for the shortest period which is compatible with the securing to those concerned in the India-Burma trade of a reasonable measure of certainty as to the immediate future. One possible course would be to impose the agreement for an undefined period subject to denunciation by either country at reasonable notice, say twelve months. If the agreement proved to be congenial to the needs of both, such an arrangement might promise the greatest prospect of stability; but there is a risk that national amour propre might lead one or both of the new Governments to denounce it as soon as it had the power to do so, with the result that the agreement might last for little more than the period of notice. Another course, advocated by the Burma Chamber of Commerce, would be to enact that the agreement should continue until replaced by another concluded between the two new Governments. This, however, would give one Government, if it found that it enjoyed an advantage at the expense of the other, the option of retaining that advantage indefinitely; nor do we think that it would be fair to impose upon the future Government of Burma in the period immediately following

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separation the heavy burden of negotiating an intricate Trade Agreement. In our opinion, the two Constitution Acts should state the minimum 26 period for which the Agreement is to be binding on India and Burma and also make it clear that after the termination of that period it should be 28 open to, hut not incumbent on, either side to give notice of its intention to determine it; the period of notice, which might conveniently perhaps 30 be twelve months, should also be stated in the Act. We do not ourselves 31 make any more precise recommendation as to what the minimum period 32 of the Agreement's validity should be than that it should be less than 33 one year, for we think it would be far best that the actual period should, 34 like the content of the Agreement, be fixed by mutual accommodation between India and Burma in the course of the negotiations. If, however, they should fail to reach agreement on this point we think that His Majesty's Government who would no doubt be apprised of the differing views held, should insert a specific period in the Bills laid before Parliament. We think also that the agreement should contain provisions for the mutual adjustment of details from time to time during its currency, where both parties desired such adjustments to be made '

It is moved by Sir Samuel Hoare and Mr. Butler. Line 26, to leave out ("two Constitution Acts") and to insert ("legislative provisions" for both India and Burma").

The same is agreed to.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy. Lines 28 to 30, to leave out from ("period") in line 28 to ("the") in line 30 and to insert ("which must elapse before either party "to the agreement can give notice to terminate it, and also the length "of").

The same is agreed to.

It is moved by Sir Austen Chamberlain on behalf of the Lord Eustace Percy. Line 31, to leave out {" should also be stated in the Act.").

The same is agreed to.

It is moved by the Lord Rankeillour. Line 31, after ("months") to insert ("they should also provide for the replacement of the agreement by an award to be made by an Imperial Commissioner should the two "Governments differ as to the terms on which the agreement should be "renewed").

The same is disagreed to.

It is moved by the Lord Eustace Percy. Lines 32 and 33, to leave out ("minimum period of the Agreement's validity") and to insert ("first period").

The same is agreed to.

It is moved by the Lord Eustace Percy. Line 34, after (" should ") to insert (" not ").

The same is agreed to.

Paragraph 405 is again read, as amended.

The further consideration of paragraph 405 is postponed.

Paragraph 406 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 225, lines 34 and 35, to leave out from ("the") in line 34 to ("in") in line 35 and to insert ("Act "should contain provision for an Order in Council empowering the Governor-"General of India and the Governor of Burma respectively").

The same is agreed to.

Paragraph 406 is again read, as amended.

The further consideration of paragraph 406 is postponed.

Paragraph 407 is again read.

It is moved by the Marquess of Linlithgow. Page 226, lines 22 to 24, to leave out from (" be ") in line 22 to (" for ") in line 24 and to insert (" made " statutorily binding on both Governments ").

The same is agreed to.

Paragraph 407 is again read, as amended. The further consideration of paragraph 407 is postponed.

Paragraphs 408 to 414 are again postponed.

Paragraph 415 is read, as amended, and is as follows:-

415. The Council of Ministers will have a constitutional right to tender Law and Order. advice to the Governor in the exercise of the powers conferred upon him by the Constitution Act, other than powers connected with certain Departments which will be reserved for the Governor's own direction and control and matters left by the Constitution Act to the Governor's own discretion; but the Governor will be declared to have a special responsibility in respect of certain matters and where they are involved will be tree to act according to his own judgment. The matters which it is proposed shall be reserved to the Governor's own direction and control, are Defence, External Affairs, Ecclesiastical Affairs, the affairs of certain Excluded Areas, and monetary policy, currency and coinage. With these we deal later, but we point out that they do not include law and order, which will, therefore, fall within the ministerial sphere, as it will in the Indian Provinces, if our recommendations are accepted. In general the same considerations apply in Burma, if separated, as apply in the other Previnces of British India. But there are certain special circumstances which we think it right to mention. On the one hand Terrorism of the Bengal type is practically unknown among the Burman people, and communal strife arising from strong religious antagonisms is rare and unimportant. To this extent the problem is less difficult than in other Provinces. On the other hand Burma exhibits racial rivalries which on occasion have developed into violent riots between one community and another, and serious crime-especially crimes of violenceappears to be more rife in Burma than in India; in proportion to population the annual record of dacoities, murders and cattle thefts is very high. This, no doubt, is due, in part, to the fact that barely 50 years have elapsed since, with the conquest of Upper Burma, British authority was established throughout the Province and British ideas of Law and Order hegan to be instilled into the whole countryside. To this fact and perhaps also in some degree to the Burman temperament may, we think, be attributed the organised resistance to authority, amounting to armed rebeliion and guerilla warfare, which has at times, even within the past few years, affected a large number of districts and which, owing to the difficult nature of the country and the lack of good communications, has proved yery troublesome to put down. Nevertheless we are of opinion that the responsibility for law and order ought in future to rest on Ministers in Burma no less than in India and for substantially the same reasons. At the same time, bearing in mind the special features of the problem that we have described, we think it essential that the Governor of Burma should have powers additional to the powers flowing from his special responsibility for the prevention of any grave menace to the peace and tranquillity of Burma as proposed in the Burma White Paper. He, like the Governors of Indian Provinces, should be vested with the statutory powers which we have recommended in their case to equip

(C14542)x3 them against attempts to overthrow by violence the Government established by law. Further, conditions in Burma manifestly necessitate the 46 maintenance of an efficient and highly disciplined police force; and we are of opinion that the recommendations which we made in an earlier passage<sup>2</sup> for the protection of the police forces in Indian Provinces by protecting the statutes and rules which govern their internal organisation 50 and discipline should be adopted in Burma also."

It is moved by the Lord Eustace Percy. Lines 43 to 46, to leave out from the beginning of line 43 to the end of the sentence and to insert ("He should be given the same statutory powers against attempts to "overthrow by violence the Government established by law as we have "recommended should be vested in the Governors of Indian Provinces".) The same is agreed to.

It is moved by the Lord Eustace Percy. Line 50, to leave out ("protecting") and to insert ("safeguarding").

The same is agreed to.

Paragraph 415 is again read, as amended.

The further consideration of paragraph 415 is postponed.

Paragraph 416 is again read.

It is moved by the Marquess of Linlithgow. Page 230, line 12, to leave out ("The latter service requires") and to insert ("These services require"). The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 230, line 13, to leave out (" is ") and to insert (" are ").

The same is agreed to.

Paragraph 416 is again read, as amended.

The further consideration of paragraph 416 is postponed.

Paragraphs 417 to 421 are again postponed.

Paragraph 422 is again read.

It is moved by the Marquess of Linlithgow. Page 232, line 41, after (" that ") to insert (" the control of ").

The same is agreed to.

Paragraph 422 is again read, as amended.

The further consideration of paragraph 422 is postponed.

Paragraphs 423 to 425 are again postponed.

Paragraph 426 is again read.

It is moved by the Lord Rankeillour. Page 234, line 29, to leave out ("unless it is sooner dissolved ")

The amendment, by leave of the Committee, is withdrawn.

Paragraph 426 is again read.

The further consideration of paragraph 426 is postponed.

Paragraph 427 is again read.

It is moved by the Marquess of Linlithgow. Page 235, line 5, to leave out (" European").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 235, line 6, after the first (" Commerce") to insert (" (European)").

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 235, line 15, after ("that") to insert (", as we have already observed,")

The same is agreed to.

It is moved by the Marquess of Linlithgow. Page 235, line 16, to leave out (", as we have already observed,").

The same is agreed to.

Paragraph 427 is again read as amended.

The further consideration of paragraph 427 is postponed.

Paragraph 428 is again read.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 235, lines 46 to 49, to leave out after ("opinion") in line 46, to the end of the paragraph and to insert ("that as the Chambers of Commerce" and Trades Association are to be represented by nine special seats, and bearing in mind the statement in the Secretary of State's Mcmorandum that four Labour constituencies only may appear short measure two of these seats should be assigned to Labour, one to Burman labour and one to Indian, thus bringing up the Labour representation to six. The total number of the House of Representatives should therefore be 132 instead of 133").

Objected to.

On Question :-

Contents (6).

Lord Archbishop of Canterbury. Marquess of Reading.

Lord Snell, Mr. Attlee. Mr. Cocks.

Mr. Morgan Jones.

Not Contents (18).

Marquess of Salisbury. Marquess of Zetland. Marquess of Linlithgow. Earl of Derby. Earl Peel. Viscount Halifax, Lord Middleton. Lord Hardinge of Penshurst. Lord Rankeillour. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Sir Reginald Craddock. Sir Samuel Hoare. Lord Eustace Percy Sir John Wardlaw-Milne.

Earl Winterton.

The said amendment is disagreed to.

Paragraph 428 is again read.

The further consideration of paragraph 428 is postponed.

Paragraph 429 is again read.

It is moved by Mr Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 236, line 23, after ("the") to insert ("exceptional").

The same is agreed to.

It is moved by Mr. Cocks, Mr. Attlee, Mr. Morgan Jones, and the Lord Snell. Page 236, lines 24 to 34, to leave out from ("Burma") in line 23 to the end of the paragraph and to insert ("and to the fact that they own

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"property jointly with their husbands and are regarded as equal partners in domestic, economic, and political matters, we are glad to give favourable consideration to this suggestion. We are informed that the inclusion of a wifehood franchise will increase the number of women voters to a figure approximating to 2,000,000 and we have no doubt that this will present considerable administrative difficulties. Nevertheless we feel that special efforts should be made to overcome these difficulties and that in no case should they be accepted as a reason for denying to the women of Burma in the matter of the franchise that equal status with men which they have enjoyed in other respects for many centuries.")

Objected to.

Earl Winterton

On Question :--

Contents (8).

Lord Archinshop of Canterbury.
Lord Hardinge of Penshurst
Lord Snell
Lord Hutchison of Montrose
Mr Attlee
Mr Cocks
Mr Morgan Jones.

Not Contents (18)

Marquess of Salisbury. Marquess of Zetland Marquess of Linlithgow. Marquess of Reading. Larl of Derby Earl Peel Viscount Hahfax. Lord Middleton Lord Rankellour. Mr Butler Major Cadogan Sir Austen Chamberlain Sir Reginald Craddock Mr Davidson Sir Samuel Hoare. Su Joseph Nall Lord Eustace Percy Sir John Wardlaw-Milne

The said amendment is disagreed to.

It is moved by the Lord Eustace Percy Page 236, lines 26 to 34, to leave out inform; "the "implies 26 to the end of the paragraph and to meet in electorate by over 40 per cent and we hesitate to recommend so near an "approach to adult franchise at present")

Objected to.

On Question:--

Contents (10).

Marquess of Linlithgow.

Earl Peel

Viscount Halifax

Lord Hardinge of Penshurst Lord Hutchison of Montrose

Mr Butler

Sir Austen Chamberlain.

Mr Davidson

Lord Eustace Percy

Sir John Wardlaw-Milne.

Not Contents (9).

Lord Archbishop of Canterbury

Marquess of Salisbury

Marquess of Zetland

Marquess of Reading Earl of Derby

Lord Middleton

TOLG MIGGIERON

Major Cadogan.

Sir Reginald Craddock

Sir Joseph Nall

The Lord Snell, The Lord Rankelliour, Mr Attlee, Mr Cocks, Sn Samuel Hoare, and Mr. Morgan Jones did not vote.

The said amendment is agreed to.

Paragraph 429 is again read, as amended.

The further consideration of paragraph 429 is postponed,

Paragraphs 430 to 437 are again postponed.

Paragraph 488 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler. Page 241, line 31, after (" and ") to insert (" we consider that the recommendation in respect of the Public Services in India should similarly apply

In the following paragraphs, "mutatis mutandis in respect of Burma. In the following paragraphs, " therefore,")

The same is agreed to.

Paragraph 438 is again read, as amended.

The further consideration of paragraph 438 is postponed.

Paragraphs 438A and 439 are again postponed.

Paragraph 440 is again read.

It is moved by the Marquess of Linlithgow. Page 241, line 14, after ("that") to insert f'as regards the Railway Services").

The same is agreed to.

Paragraph 440 is again read, as amended.

The further consideration of paragraph 440 is postponed.

Paragraphs 441 to 442A are again postponed.

Paragraph 443 is read, as amended, and is as follows:-

"443. In so far as this is a matter between the United Kingdom and Discriptionalide with Russia Whyte Paper supplemented by a State Control of the Russia Whyte Paper supplemented by the Russia Whyte Control of t Burma, the proposals in the Burma White Paper, supplemented by a Burma was the Saratary of State are India day subsequent Memorandum submitted to us by the Secretary of State, are India the same as those in the case of India, and we approve them subject to the restricted general application to the case of Burma, mutatis mutandis, of the modifications which we have made in the corresponding proposals originally submitted to us in relation to India. In particular we recommend that there should be imposed on the Governor of Burma an additional responsibility corresponding to that which we have recommended should be imposed on the Governor-General of India for the prevention of dis-11 criminatory or penal treatment of imports from the United Kingdom, we may refer to what we have said upon the subject in an earlier part of our 13 Report. The Burma White Paper and the Secretary of State's Memorandum, however, deal also with the question of discrimination as between India and Burma after the separation of the two countries, and this raises certain problems of its own.

It is moved by the Marquess of Linlithgow. Lines 11 to 13, to leave out from (" Kingdom") in line 11 to the end of the sentence.

The same is agreed to.

Paragraph 443 is again read, as amended.

The further consideration of paragraph 443 is postponed.

Paragraph 444 is again postponed.

Paragraph 445 is read, as amended, and is as follows -

"445. There are certain legal restrictions in force at present on the right of persons of non-Burman birth or domicile to compete for certain public appointments or to qualify for the exercise of certain professions, and it is right that these should be retained. As regards the future, the power of the Burma Legislature to impose conditions or restrictions on entry into Burma should prove a sufficient safeguard Subject to the above modifications, we are of opinion that the question of discrimination as between India and Burma should be dealt with on the same lines as that of discrimination between India and the United Kingdom But the separation of Burma from India will create a special category of persons in Burma of United Kingdom domicile for whose protection in India provision will, we think, require to be made in the Constitution Act for India rather than that for 12 We refer to the case of Companies established already in Burma with United Kingdom personnel and United Kingdom capital Such Companies have established themselves in Burma as a Province of British India and we think that it would evidently be inequitable if, after the separation of Burma, they are in a less favourable position in respect of their operations in British India than a Company established at the same time and under the same conditions in, say, Bombay or Bengal

It is moved by the Marquess of Linkthgow. Line 12, to leave out (" Act for ") and to insert (" of ").

The same is agreed to

It is moved by the Marquess of Linhthgow Line 12, to leave ont the second (" for ") and to insert (" of ").

The same is agreed to

Paragraph 445 is again read, as amended.

The further consideration of paragraph 445 is postponed

Paragraph 446 is again read.

It is moved by Sir Samuel Hoare and Mr. Butler Page 244, line 12, to leave out ("practise") and to insert ("be enrolled on the Medical Register"). The same is agreed to.

It is moved by Sir Samuel Hoare and Mr Butler Page 244, line 29, to leave out ("unlikely that") and to insert ("uncertain when").

The same is agreed to

It is moved by Sir Samuel Hoare and Mr. Butler. Page 244, line 30, to leave out (" in the near future ")

The same is agreed to

Paragraph 446 is again read, as amended

The further consideration of paragraph 446 is postponed.

## Paragraph 447 is again read

It is moved by Sir Samuel Hoare and Mr Butler Page 244, line 41, to page 245, line 7, to leave out from ("that") in line 41, page 245 to the end of the paragraph and to insert ("statutory provision should be made to secure "to holders of United Kingdom and Indian Medical qualifications which are "recognised by the General Medical Council the right to be enrolled on the Medical Register in Burma. The precise form which the provision should

"take will require examination, but we think that reciprocal arrangements

- "should be made by which the medical degrees granted by Rangoon." University, if and when recognised by the Indian Medical Council and the
- "General Medical Council, would receive a similar measure of protection in India and in the United Kingdom to that which we think suitable for

"United Kingdom and Indian qualifications in Burma.").

The same is agreed to.

Paragraph 447 is again read, as amended.

The further consideration of paragraph 447 is postponed.

Paragraphs 448 and 449 are again postponed.

Paragraph 450 is read, as amended, and is as follows:-

"450. The recommendations which we have made on these four Constituent subjects in the case of India will, we think, be equally appropriate, mulatis mulandis, in the case of Burma But as Burma after separation will be a unitary State, and will not be within the jurisdiction of the Indian Federal Court, we think that an appeal should lie as of right to the Privy Council from the High Court in any case involving the interpretation of the Constitution Act. We take this opportunity to record our opinion that the recommendations which we have made elsewhere for the prescription of English as the language of the High Courts in India and the use of English for the conduct of business in the Indian Legislatures should apply equally to the case of the High Court and the Legislature in Burma. As regards audit arrangements, it is evident that 13 Burma will require after separation ber own audit system. As regards Home Audit, bowever, it may well be found that the amount of Burma business transacted in London will not be sufficient to justify the appointment of a separate officer as Home Auditor, and in that event we think that some arrangement should be made whereby the Auditor for Indian Home Accounts should also act in an agency capacity for Burma. We tbink that liberty should be afforded in the Act for the new Burma Government to establish a High Commissioner of its own in London if it finds it accessary to do so; but we foresee the possibility that the amount of business requiring to be transacted in London on behalf of the Government of Burma may be so small as not to justify, at the outset, the expense of establishing such an office; and we think that it might be well to examine the possibility of the functions of such an official being undertaken by some other authority on an agency basis for the time being."

It is moved by the Lord Rankeillour. Line 13, after ("system") to insert ("similar to that in India").

The amendment, by leave of the Committee, is withdrawn.

Paragraph 450 is again read.

The further consideration of paragraph is postponed.

Paragraph 451 is read, as amended, and is as follows:-

("451. We have recommended that the corporation known as the The Secretary Secretary of State in Council should cease to exist after the establishment of Provincial Autonomy in India, and in that event the Secretary of State in Council would equally cease to exercise any functions in relation

· 5 to Burma. It follows that there should be a transference of the rights, liabilities and obligations incurred by the Secretary of State in Council

in respect of Burma to the appropriate authority to be established in Burma, corresponding to the transference to the Federal or Provincial Governments in India which in an earlier passage we have suggested should be provided for in the Indian Constitution. The question has been raised whether the Secretary of State for India should become in future the Secretary of State for India and Burma. The Joint Memorandum of the Burman Delegates suggests that there should be a separate Secretary of State for Burma, or else that the Secretary of State for the Dominions should hold the office. We are disposed to think that the Secretary of State for India should in future hold two separate portfolios, one as Secretary of State for India and one as Secretary of State for Burma; and we are of opinion that, though the two offices would be legally distinct, it is most desirable on practical grounds that they should be held by the same person. There is, we are convinced, no real danger that the interests of Burma would be nnfairly subordinated to those of India in the hands of a Secretary of State holding the double office.")

It is moved by Sir Samuel Hoare and Mr. Butler. Lines 1 to 5, to leave out from the beginning of the paragraph to ("It") in line 5 and to insert ("The establishment of responsible government in Burma "necessarily implies, as in the case of India, the disappearance in relation "to Burma of the corporation known as the Secretary of State in Council.") The same is agreed to,

Paragraph 451 is again read, as amended. The further consideration of paragraph 451 is postponed.

Paragraphs 452 and 453 are again postponed.

Ordered that the Committee be adjourned till to-morrow at Eleven o'clock.

# Die Veneris 12° Octobris 1934

# Present ;

LORD ARCHBISHOP OF CANTERBURY. LORD CHANCELLOR. MARQUESS OF SALISBURY. MARQUESS OF ZETLAND. MARQUESS OF LINLITHGOW. MARQUESS OF READING. EARL OF DERBY. EARL OF LYTTON. EARL PEEL. VISCOUNT HALIFAX. LORD MIDDLETON.

LORD HARDINGE OF PENSEURST. LORD SNELL. LORD RANKEILLOUR.

LORD HUTCHISON OF MONTROSE.

Mr. Attlee. MR. BUTLER. Major Cadogan,

SIR AUSTEN CHAMBERLAIN.

MR. COCKS. SIR REGINALD CRADDOCK.

MR. DAVIDSON. MR. FOOT.

SIR SAMUEL HOARE. Mr. Morgan Jones. Str Joseph Nall. LORD EUSTACE PERCY.

SIR JOHN WARDLAW-MILNE.

THE MARQUESS OF LINLYTHGOW in the Chair.

The Order of Adjournment is read. The Proceedings of yesterday are read

The Course of Proceedings is again considered.

The Report, as amended, is again considered.

It is moved by the Marquess of Linlithgow that paragraphs 1 to 1191 inclusive, as amended, be agreed to.

The same are agreed to.

It is moved by the Marquess of Linlithgow that paragraph 120s, as amended, be agreed to.

Objected to.

On Question:-

Contents (17).

Lord Archbishop of Canterbury. Lord Chancellor, Marquess of Linlithgow. Marquess of Reading. Earl of Derby. Earl Feel. Viscount Halifax.

Not Contents (7).

Marquess of Salisbury. Marquess of Zetland. Earl of Lytton. Lord Rankeillour. Lord Middleton. Sir Reginald Craddock. Sir Joseph Nall.

<sup>1</sup> Paragraphs I to 119 in the Report as amended correspond to 1-120 in the Draft

Paragraph 120 in the Report as smended corresponds to 121 in the Draft Report.

Contents (17)-conid.

Not Contents (7)-tonid.

Lord Hardinge of Penshurst.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.

Sir John Wardlaw-Milne.

The Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones did not vote. The same is agreed to.

It is moved by the Marquess of Linlithgow that paragraphs 1211 to 150<sup>3</sup> inclusive, as amended, be agreed to:—

The same are agreed to.

It is moved by the Marquess of Linlithgow that the Appendix (1) as amended, be agreed to:—

The same is agreed to.

It is moved by the Marquess of Linlithgow that paragraphs 151 to 1993 inclusive, as amended, be agreed to:—

Objected to.

On Question :--

Contents (19).

Lord Archbishop of Canterbury.
Lord Chancellor.
Marquess of Zetland.
Marquess of Linlithgow.
Marquess of Reading.
Earl of Derby.
Earl of Lytton.
Earl Peel.
Viscount Halifax.
Lord Hardinge of Penshurst.
Lord Hutchison of Montrose.
Mr. Butler.
Major Cadogan.
Sir Austen Chamberlain.
Mr. Davidson.

Mr. Davidson.
Mr. Foot.
Sir Samuel Hoare.
Lord Eustace Percy.
Sir John Wardlaw-Milne.

Not Contents (5).

Marquess of Salisbury. Lord Rankeillour. Lord Middleton. Sir Reginald Craddock. Sir Joseph Nall.

The Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones did not vote. The same are agreed to.

<sup>&</sup>lt;sup>1</sup> Paragraph 121 in the published Report as amended was inserted after paragraph 121 in the Draft Report (vids Vol. 1, Part II. Proceedings, pp. 459-460).

Paragraphs 122 to 150 in the Report as amended correspond to 122-147 in the Draft Report.

Paragraphs 151 to 199 in the Report as amended correspond to 148-200 in the Draft Report.

It is knoved by the Marquess of Linlithgow that paragraph 200', as amended, be agreed to.

Objected to.

On Question:—

Contents (21).

Lord Chancellor. Marquess of Salisbury.

Marquess of Zetland.

Marquess of Linlithgow.

Earl of Derby. Earl of Lytton.

Viscount Halifax. Lord Middleton.

Lord Hardinge of Penshurst.

Lord Rankeillour.

Lord Hutchison of Montrose.

Mr. Attlee. Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain.

Sir Reginald Craddock.

Mr. Davidson. Sir Samuel Hoare.

Sir Joseph Nall.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

The Earl Peel did not vote.

The same is agreed to.

It is moved by the Marquess of Linlithgow that paragraphs 201 to 2731 inclusive as amended, be agreed to.

Objected to.

On Question:-

Contents (19).

Lord Archbishop of Canterbury.

Lord Chancellor.

Marquess of Zetland. Marquess of Linlithgow.

Marquess of Reading.

Earl of Derby.

Earl of Lytton.

Earl Peel

Viscount Halifax.

Lord Hardinge of Penshurst.

Lord Hutchison of Montrose.

Mr. Butler.

Major Cadogan.

Sir Austen Chamberlain.

Mr. Davidson.

Mr. Foot.

Sir Samuel Hoare.

Lord Eustace Percy.

Sir John Wardlaw-Milne.

Not Contents (6).

Not Contents (5):

Marquess of Salisbury.

Sir Reginald Craddock. Sir Joseph Nall.

Lord Rankeillour.

Lord Middleton.

Lord Archbishop of Canterbury.

Marquess of Reading.

Lord Snell. Mr. Cocks.

Mr. Foot.

Mr. Morgan Jones.

The Lord Snell, Mr. Attlee, Mr. Cocks, and Mr. Morgan Jones did not vote. The same are agreed to.

Paragrav hs 200-273 in the Report as amended correspond to 201-268 in the Draft Report.

It is moved by the Marquess of Linlithgow that paragraphs 274 to 4821 inclusive, as amended, be agreed to.

The same is agreed to.

It is moved by the Marquess of Linlithgow that the Report, as amended, agreed to.

Objected to.

On Question :--

Contents (19)

Lord Archbishop of Canterbury. Lord Chancellor. Marquess of Zetland. Marquess of Linlithgow. Marquess of Reading. Earl of Derby. Earl of Lytton. Earl Peel, Viscount Halifax. Lord Hardinge of Penshurst. Lord Hutchison of Montrose. Mr. Butler. Major Cadogan. Sir Austen Chamberlain. Mr. Davidson. Mr. Foot. Sir Samuel Hoare. Lord Eustace Percy.

Sir John Wardlaw-Milne. The same is agreed to. Not Contents (9)

Marquess of Salisbury.
Lord Snell.
Lord Rankeillour.
Lord Middleton.
Mr. Attlee.
Mr. Cocks.
Sir Reginald Craddock.
Mr. Morgan Jones.
Sir Joseph Nall.

The Secretary of State for India is heard to request that the following papers be printed and be laid before both Houses of Parliament as Record C 1.2:—

- I.—Memorandum by the Secretary of State for India on the Action contemplated in relation to Family Pension Funds.
- II.—Government of India, Home Department, Resolution, dated 4th July, 1934.
- III .- A Note by the Secretary of State for India on Terrorism in India.
- IV.—Questions asked by the Marquess of Salisbury on the position of the States in the Federal Finance Scheme of the White Paper, and replies thereto by the Secretary of State for India.
- V.—Memorandum by the Secretary of State for India on the Federal Legislature.
- VI.—Letter from the Secretary of State for India to the Chairman on the proposed boundaries for Orissa.
- <sup>2</sup> Paragraphs 274-482 in the Report, as amended, correspond to 269-453 in the Draft Report.
  - \* Vide Volume II (Session 1933-34), Records.

The following members of the Committee are heard to request that their memoranda be printed and be laid before both Houses of Parliament as Record C 2.1

I.—The Earl of Derhy, the Marquess of Zetland and Sir Austen Chamberlain.

Memorandum on direct versus indirect election.

### II.—The Lord Rankeillour—

- (a) Memorandum on the relations of the two Houses of the Federal Legislature in regard to Supply.
- (b) Memorandum on the Courts in India.
- (c) Memorandum on special powers in relation to Defence.
- III.—The Earl of Derby and Sir Joseph Nall.

Memorandum on Commercial Discrimination.

IV.-Mr. C. R. Attlee.

Memorandum on Responsibility at the Centre.

V .- The Lord Hardinge of Penshurst.

Memorandum on the Anglo-Indian Community.

The Secretary of State for India is heard to request that the following papers be printed and be laid before both Houses of Parliament as Record C 3.1:—

Consultations on Irrigation and Forestry.

## 1. Irrigation-

- I.—Memorandum by Sir Raymond Hadow, C.I.E., A.M.Inst.C.E.
- II.—Notes for consultation with Committee by Mr. (now Sir) C. T. Mullings, C.S.I.
- III.—Consultation between the Committee and Sir Raymond Hadow and Mr. (now Sir) C. T. Mullings.

## 2. Forestry-

- I.—Memorandum by Sir Alexander Rodger, U B.E.
- II.—Consultation between the Committee and Sir Alexander Rodger.

Ordered that the decision whether or not to publish the above papers as Records be postponed until Wednesday, the 31st October.

It is moved that the Lord in the Chair and Sir Austen Chamberlain do move the following Resolution in the House of Lords and in the House of Commons respectively:—

"That it is desirable that the publication of the Report and Proceedings of the Joint Select Committee on Indian Constitutional Reform, and of such further Records as the Committee shall lay upon the Tables of both Houses, shall take place simu'taneously in Great Britain and in India and that copies printed by His Majisty's Stationery Office be published in India at the same time that they are published in this country."

The same is agreed to, and ordered accordingly.

1 Vade Volume II (Session 1933-34) Records.

Ordered, that the Committee be adjourned until Wednesday, the 31st October at midday, in order that they may meet again to direct that the Lord in the Chair do make the Report to the House of Lords and that he do lay the Proceedings and certain further Records upon the Table of the House of Lords, and that Sir Austen Chamberlain be directed to do likewise in the House of Commons.

# KEY TO AMENDMENTS AND TO NEW PARAGRAPHS ADDED TO THE ORIGINAL DRAFT REPORT

		- <del></del>		
Number of paragraph in original Draft Report. (Vol. I, Part II)	Number of new or alternative paragraph inserted into original Draft Report during consider- ation.'	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
1 to 42 were read but never considered.	_		470.	_
		Note.—Alternative paragraphs 1 to 42B were considered in heu of the original paragraphs 1 to 42, and will be found printed in extenso on pp. 470 to 491 of the Proceedings.	. •	
-	1	The Statutory Commission's survey.	523.	1
'	2	The peoples of India	498, 517, 523. 498.	2
	3	The Indian States	498-9, 524.	3
<del>-</del>	4	British India	524.	4
_	5	Features of present constitu-	499.	5
~	6	The British achievement	499, 524. <i>524</i> .	6
	7,	The Mogul Empire	499, 525. 625.	, 7
-	8	The post-Mogul period	499.	8
	. 9	Restoration of peace and order	500, 525. 625, 526.1	9

<sup>&</sup>lt;sup>1</sup> The Committee divided.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. I. Part I.)	Pagess of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I., Part I.)
****	10	Influence of British constitu- tional ideas.	504, 526. 504-5.	10
	10-42B		500-504,1	
	• 11	Reality of Indian political aspirations.	505, 528-7.	11
	12	The preamble to the Act of 1919.	505, 527. 627.1	12
-	13	Constitutional theory and practice.	505, 528,	~
15	-	Constitutional development should be evolutionary.	528.	15
_	17	Abolition of dyarchy approved	505, 528.	17
	18	Responsible government and social legislation,	505–6.	18
-	19	Responsible government and the enforcement of law and order.	506. 528.	19
-	20	British conception of parlia- mentary government.	506-7 <b>, 529-3</b> 0.	20
	21	Nature and objects of safe- guards.3	530.	21
22	_	Need for flexibility	530.	22
23	_	for a strong Executive	604.	23
	24	for an efficient administra- tion;	507, 530.	24

<sup>&</sup>lt;sup>1</sup> The Committee divided.

<sup>\*</sup> These paragraphs were not inserted.

This marginal note has been changed since the paragraph was first laid before the Joint Committee.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. 1, Part 1.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
<u> </u>	25	and for an impartial authority to hold scales evenly between conflict-	517, 531. 507.	25
<b>–</b> '	26	ing interests.  Provincial Autonomy requires a re-adjustment at centre.	507, 605.	26
)	27	Necessity for guarding against centrifugal tendencies.	517, 531.	27
_	28	The Indian States and an All- India Federation.	517. <i>531</i> .	28
. 29	-	Difficulties of a Federation composed of disparate units.	531.	29
. <u>-</u> 	30	Unity of India endangered without a constitutional relationship between States and British India.	507, 532,	30
·	31	Economic ties between States and British India.	507, 518, 532, 605.	31
	37	(2) between Centre and Provinces;	508, 532. 508.	37
	38	(3) in the Central Govern- ment itself.	518, 533 <u>4</u> .¹ 508.	38
. <del>-</del>	39	The Central Legislature and the Army Budget.	508-9, 536. 535, <sup>1</sup> 536. <sup>1</sup>	39
40		Governor-General's power of intervention, and the dangers of a gradual intro- duction of responsibility at the centre. <sup>2</sup>	536.	40

<sup>1</sup> The Committee divided.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

<sup>&</sup>lt;sup>2</sup> This marginal note has been changed since the paragraph was first laid before the Joint Committee.

		<del></del>		
Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found, (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
	41	Weakness of present Central Government.	509.	41
42	-	Emergency of body of central opinion in United Kingdom and in India.	536-7 <i>536</i> .	. 42
-	42A	Issues with which Parliament is faced.	509.	43
~	42B	Parliament's choice must be resolute and decisive.  Note.—Paragraphs 43 to 453 will be found in extenso in these Proceedings, vade pp. 64 to 254.	537.	
43	-	The Committee's terms of reference.	309.	45
44	-	Arrangement of White Paper	518, 537. 289-301.1	46
45	-	Вигма	289-301.1	47
46	} -	Definition of Provincial Autonomy.	435, 537, 309.	48
51	] -	Conflicts of law in concurrent field.	309.	53
52	}	The residuary legislative power,	537.	54
	53	Difficulty of White Paper proposal.	310-11. 310.3	55
_	54	Cleavage of opinion in India.	311.	56

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italia* figures.

The Committee divided.
 This marginal note has been changed since the paragraph was first laid before the Joint Committee.
 Amendments laid before Joint Committee and postponed.

Number of paragraph in original Draft Report. (Vol. I, Part II,)	Number of new or alternative paragraph insorted into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be tound. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
55	<b>-</b> .	The present Governors' Provinces.	538.	57
- ,	56A	Separation of Sind from Bombay.	440-2.12	_
• 57	-	Case for separation from Bombay.	459, 538.	59
58	. ~	Orissa.	435. 311, 442–4.	60
60		Provincial boundaries	312, 436, 538, 312, 436.	62
61	_	Constitution of future Governor's Provinces.	436, 313,	63
	61A	Constitutional advance in the provincial field.	313.	64
64	_	Executive power and authority to be vested in Governor.	510.	67
68	_	Adaptation to different stages of constitutional development.	313, 436. 313, 538.	71
. ~	71	Relations between Governor and Ministers.	313–14, 539, <del>60</del> 6.	<b>74</b>
<b>72</b>	_	Constitutional implications of Governor's "special responsibilities",	314, 539. 314.	75
73	-	Parliament and the Instru- ment of Instructions.	436, 539. 314, 539.	76

<sup>&</sup>lt;sup>1</sup> The Committee divided.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

This paragraph was not inserted.

Number of paragraph in original Draft Report. (Vol. I. Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consider- ation.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages*of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published, (Vol. I, Part I.)
76	} -	Peace and tranquility of the Province, Minorities, Public Services.	459. 315, <b>640</b> . <sup>2</sup>	79
77	<del>-</del>	Rights of States, Partially Excluded Areas.	316.	. 80
79	_	Special circumstances of North- West Frontier Province and Sind.	316, 541.	82
	79A	A special responsibility for safeguarding financial sta- bility of Province not recom- mended.	317, 542,	84
82	_	Difficulties of proposal that Ministers should be elected Members of Legislature.	542.	87
83	-	Suggested methods for meeting difficulty.	318-19.1 318, 543,	88
84	-	The Governor's choice should not be fettered.	319.* <i>319.</i> *	_
85	-	Law and Order	319-23.1 543.	89
86		Arguments for and against transfer.	323, 543. 319–23.¹	90
87	-	Control of law and order an essential attribute of responsible Government.	323, 414, 544. 319-23.1	91
<del>-</del>	88	The Governor's special responsibility.	323, 416, 545. 319-23.1	92
-	89	The Police Rules	325–26, 416–17, 545–8. 418.	93

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italia figures*,

The Committee divided.
 This paragraph has been left out.
 Amendments laid before Committee and postponed.

Number of paragraph in original Draft Report. (Vol I. Part II)	Number of new or alternative paragraph inserted original Draft Report during consider- ation	Marginal Note to paragraph in Report as finally published. (Vol I, Part 1)	Pages of Proceedings on which amendments will be found (Vol I, Part II.)	Number of paragraph in Report as finally published, (Vol I, Part I)
	90	The Special Branch	326, 417 326-7,1414 2	94
-	91	Secret intelligence reports	417-18. 327-8,* 415.*	95
-	92	Special powers required for combating terrorism 4	418–19,* 546, 328,* 415,* 547.*	96
	<del>9</del> 2A.	Central Intelligence Bureau	419-20. 548.	97
93		Relations between Governor and Provincial Administration.	444. 328.	98
94	-	Importance of the office of Governor	329, 548.	99
95	- {	Rules of Executive business	329.	100
96	-	The Governor's staff	437, 548. 329.	101
<b>97</b> .		Influence of Governor on working of responsible government.	549.	102
98	_	Governor's special powers	549.	103
99	-	Legislative powers	329–30.	104

<sup>1</sup> Amendment moved and postponed.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

Amendment again considered and postponed.

<sup>&</sup>lt;sup>8</sup> Amendments laid before Joint Committee and postponed.

This marginal note has been changed since the paragraph was first laid before the Joint Committee.

The Committee divided

		· · · · · · · · · · · · · · · · · · ·		
Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consider- ation.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I.) Part I.)
100	_	Governor's powers should be exercised independently of Legislature.	330.1	
101		Modification of White Paper proposal suggested.	330, 549. <i>330</i> .	10\$
102		Ordinances	330, 549.	106
104		Ordinances made on Ministers' advice.	330, 331.	108
105	-	Governor's powers in event of breakdown of constitution.	331. <i>550</i> .	109
106	-	Responsibility of Governor to Secretary of State and	550.	110
_	107	Parliament. Vital importance of Executive in Inclia.	381-2, 551. 331. <sup>3</sup>	111
-	108	Difficulties created by com- munal representation in Ministries.	332, 551-2. 331, 561-2.	112
_	109	A statutory permanence of tenure for Ministry inconsistent with Parliamentary Government.	333. 331.*	113 ·
_	110	Governor's reserve powers a guarantee for development of responsible Government.	333-4.	114
111 and 112			331-4.* 1	

<sup>&</sup>lt;sup>1</sup> This paragraph has been left out.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in Italic figures.

<sup>&</sup>lt;sup>a</sup> This marginal note has been changed since the paragraph was first laid before the Joint Committee.

<sup>\*</sup> Amendment laid before Joint Committee and postponed.

	Nymber	<del></del>		
Number of paragraph in origina Draft Report (Vol I, Part II)	of new or alternative paragraph inserted into original Draft Report		Pages of Proceedings on which amendments will be found (Vol I Part II)	Number of paragraph in Report as finally published (Vol I, Part I)
113 to 115			331-4 1	_
116	{ -	Solution of the problem lies in Indian hands.	335, 553 437, 553	115
118		Second Chambers suggested for Bombay and Madras	336-7, 554 335-6, \$554.\$	117
119	-	The Communal Award and the Poona Pact	397 337	118
120	-	Fflect of the Poona Pact	337	119
121	-	The White Paper proposals accepted	345-6, 437, 8, 554-5. 338-46, 555.	120
	121A	Special interests seats	459-60 346-7, 655-6 *	121
122	-	Composition of Second Chambers	348, 519, 556-7. 347-8,2 566-7.	122
- }	122A-D		318-50.24	_
123	- )	The existing franchise .	557	123
124	}	The proposals of the Statu- tory Commission and the Franchise Committee	557.	124
125	'	The proposals in the White Paper.	350, 558. 558	125

<sup>&</sup>lt;sup>1</sup> This paragraph has been left out.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in Italic figures

The Committee divided

Amended paragraph further amended.

<sup>\*</sup> These paragraphs were not inserted

	Number i		<del></del>	
Number of paragraph in original Draft Report, (Vol. I, Part II.)	of new or alternative paragraph inserted into original Draft Report during consider- ation.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
128	_	The proposals administra- tively practicable.	350, 558.	128
129	( -	Suggestions for group system of election considered.	351, 559.	129
	129A	Importance of development of local self-governing institutions.	559 <del>-6</del> 0.	130
130	-	The White Paper proposals approved with certain modifications.	<i>351</i> –2.¹	131
131	-	Women's franchise proposals compared with Franchise Committee's recommenda-	560.	132
132	-	tions. Vital importance of women's franchise.	352, 438, 560, 352.	134
133	-	Modifications in White Paper proposals recommended.	510, 561. 353-5, <sup>3</sup> 560. <sup>3</sup>	135
134		Recommendations with regard to women's franchise.	355, 439. 355, 1 561.	136
135		The educational qualification for men.	355-6. 355.	137
136	-	Election expenses and corrupt practices, &c.	606.	138
	136A	Disqualification of candidates for Provincial Legislature.	561-2,1 606,1	
138	_	Powers of Provincial Legis- latures.  /Modification of the White)	356 <b>, 48</b> 9.	140
139	_	Paper proposals recom- mended. Acts of Parliament extend- ing to India.	439, 563-4. 439, 622, 663.	141 and 142

Pages of Proceedings on which amendments to paragraphs were agreed to are

¹ The Committee divided.

Amendment laid before Joint Committee and postponed.

This paragraph has been left out.

This marginal note has been changed since the paragraph was first laid before the Joint Committee.

shown in Roman figures.

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic figures*.

	Nomber			 [
Number of paragraph in original Draft Report (Vol I, Part II)	of new or alternative paragraph inserted into original Draft Report during consider- ation	Marginal Note to paragraph in Report as finally published (Vol I, Part I)	Pages of Proceedings on which amendments will be found (Vol I, Part II)	Number of paragraph in Report as finally published. (Vol I, Part I)
140	_	Governor a Assent to Bills	564.	143
141	_	Excluded Areas	356, 564.	144
142	]	Ordinary procedure	519	145
143	-	Financial procedure	356, 565. 356	146
145	-	Non-votable heads of expen-	565	148
147	_	diture.  Powers of Legislative Councils and conflicts between the two Chambers	565 357, 565 357 <sup>1</sup>	150
Appendix (I)	-	Composition of Provincial Legislative Councils	519, 565. 366	Appendiz.
148	_	Federal Union of States and Provinces	357	151
150		Legal basis of new Federal Constitution	358.	153
- }	150A	Accession of States to Federa- tion a voluntary act	358, 566.	154
151	_ )	Proposed Scheme a practicable	358 *	_
153	-	Instruments should, so far as possible, follow a standard	358 <b>-9</b>	156
154	, -, }	form Accession of sufficient number of States a condition prece- dent to Federation	359	157
155	,	Differentiation of functions of Governor-General and Viceroy.	440, 566. 359–60	158

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures

Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italia* figures

The Committee divided
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159		Its separation from British India recommended.	360, 568-7. 360, 666.	162 ·
160	-	Nature of the Federal Govern- ment.4	360, 567. 360-1.	163 .
' 161	_	The present Executive in India.	567.	164
_	160-227		302-8.1	ļ —
162	-	Executive power and authority of Federation to be vested in Governor-General.	361, 510.	165
163	-	Introduction of responsible government.	111,	166
164	-	Special questions in connection with the Federal Executive.	440.	167
166	_	Responsibility for peace and tranquillity of India.	362. 362.ª	169
167	-	Responsibility for safeguard- ing linancial stability and credit of the Federation.	567. 362.	170
166	-	Responsibility for protecting the rights of Indian States.	363.	171
169	-	Selection of Ministers	363.*	-
170	j -	The Reserved Departments and the Governor-Ceneral's Counsellors.	567. 363–4.	172

<sup>&</sup>lt;sup>1</sup> These alternative paragraphs were not inserted.

<sup>\*</sup> The Committee divided.

<sup>\*</sup> This paragraph has been left out.

<sup>&</sup>lt;sup>4</sup> This marginal note has been changed since the paragraph was first laid before the Joint Committee.

Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consideration.	Marginal Note to paragraph fin Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally publisbed. (Vol. I, Part I.)
171	] - [	The Statutory Commission on the Army in India.	364-5.1	173
172	_	The Commission's recommendation.	365-6.	174
173	_	Relations between Department of Defence and other Departments.	366, 568. 668.	175
174	-	Co-operation essential	460, 511, <b>569</b> . 366.	176
	174A		460.2	_
175	-	Suggestions of British-Indian delegation.	569. 366.	177
	175A	Employment of Indian troops outside India.	366-8. <sup>1</sup> 570. <sup>1</sup>	178
176	_	Indianization	369.	179
177	_	The practical difficulties	369.	180
178	-	Further development of Indianization necessary, but a time-limit impracticable.	369.	181
180	·	The Commander-in-Chief	369-70.	183
181	} -	External Affairs	571. 370.	184
183	· -	Limit for future ecclesiastical expenditure suggested.	571. 370—1.	186
184	,-	Ministers and Counsellors	371.	187

<sup>&</sup>lt;sup>1</sup> The Committee divided.

Paragraph not inserted.

Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consider- ation.	ī	Pages, of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
.185	-	Misapprehensions as to posi- tion and functions of Counsellors.	571.	188
186		The Governor-General's staff	371. 371.	189
_	188	The difficulties of Dyarchy at the Centre;	461–2,¹ 371–2.4	191
-	189	and of composite nature of Executive.	461-2. <sup>1</sup> 37 <i>I</i> -2. <sup>4</sup>	192
_	190-1		672-3.*	-
190–192	<b>,</b>		461. <sup>1 8</sup> 371–2. <sup>4</sup>	_
193	-		461.13	_
194	_	Difficulty of the subject.	372, 573.	193
195	-	Composition of Council of State and Federal House Assembly proposed in White Paper.	573-4. 372-3.3	194
196	-	Method of Election to Council of State proposed in the White Paper.	574.	195
197	-	Method of Election to House of Assembly proposed in the White Paper.	574.	196
199	-	Direct or indirect election.	377, 575. 373-7, <sup>1</sup> 675.	198

<sup>1</sup> The Committee divided.

Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

This marginal note has been changed since the paragraph was first laid before the Joint Committee.

the Joint Committee.

These paragraphs have been left out.
Amendment moved and postponed.

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Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. 1, Part II.)	Number of paragraph in Report as finally published. (Vol. I. Part I.)
200	_	Essentials of representative government.	373-7.1 *	199
201	·	Indirect election recom- mended.	373_7.1 1	200
~ 202	_	Election to Federal House of Assembly by Provincial Assemblies.	444-5, 573. 373-9, <sup>1</sup> 573.	201
· - ·	202A	Indirect election to be regarded as being open to future review.*	379, 445, 576.	202
203	_	The Council of State.	373-7,1 379.	203
204	_	Council of State should be constituted on more permanent basis.	577. 379–80, <sup>1</sup> 511. <sup>1</sup>	204
205	_	Size of the two Federal Houses.	380	205
_	205a	Proposal for unicameral Legis- lature rejected.	380-1,	206
207	_	Representation of the States.	381, 462, 577. 381.	208
208	-	Temporary weightage in com- pensation for non-acceding States.	381.	209
209	i –	Tenure of States' Representa-	577.	210
214	-	tives. Relations between the two Houses.	383, 577. 382-3.1	215

The Committee divided.
 Amendment laid before Joint Committee and postponed.
 This marginal note has been changed since the paragraph was first laid before the Joint Committee.

<sup>.</sup> Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

<sup>(</sup>C 14542)

Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new or alternative paragraph inserted into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of of paragraph in Report as finally published. (Vol. I, Part I.)
215	_	Joint Sessions	462. 383.	216
216	-	States' representatives and British India Legislation.	383, 578.	217
217	-	Administrative nexus between the Federation and its constituent units.	383–4, 579.	218
218	_	Duty of Provincial Govern- ment to give effect to federal laws.	384, 57 <del>9</del>	219
	219	Distinction between legisla- tion in the exclusive and concurrent fields.	384-5, 462 <b>-3</b> , 580.	220
220	_	Enforcement of Federal Government's directions.	385.	221
_	220A	Remedy proposed in event of contumacy on part of Province.	385.⁵	-
<b>22</b> 1	]	Modification of White Paper proposals suggested.	385-6, 580.* 385, 580.4	
223	_	Inter-provincial relations <sup>1</sup>	386, 581.	223
226	_	Modification of White Paper proposals suggested.	582.	226
227	- 1	Central Research		227

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Pages of Proceedings on which amendments to paragraphs were agreed to are shown in Roman figures.

<sup>&</sup>lt;sup>2</sup> This paragraph was not inserted.

<sup>3</sup> Amendments laid before Joint Committee and postponed.

<sup>4</sup> This paragraph was left out.

Number of paragraph in original Draft Report. (Vol. I, Part II.)	Number of new of alternative paragraph inserted into original Draft. Report during consider ation.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. [Vol. 1, Part 11.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
Appendıx (II)		Scheme for election of British India Representatives to Council of State and House of Assembly.	511, 582 <sup>_3</sup> . 387, 582 <sup>1</sup> — <sup>31</sup> .	Appendix (II)
Appendix (III)	-	Scheme of distribution of States' seats in the Federal Legislature as propounded by the Governor-General as basis of discussion.	583.	Appendix (III)
232	-	Two Lists or one as the method of defining exclusive jurisdictions	387-8, <b>594</b> . 583.	232
233	\	The Concurrent List	584.	233
234	_	Relations between Centre and Provinces in the concurrent field.	388	234
_	238A	The Railway Police	388-9.	239
_	238B	Certain Social Services should be included in Concurrent List.	585~6.1	240
Revised	239B	Labour legislation	389-90.1	_
Lists. II	_	(Provincial)	586. 586.	Revised List II
m	_	(Concurrent)	586.	Revised List III
243	ļ -	The existing system in British	390.	245

<sup>1</sup> The Committee divided.

This paragraph was not inserted.

	Number	·	•	n -
Number of	of new or alternative paragraph		Pages of	Number of-
paragraph in original Draft Report. (Vol I, Part II)	inserted into original Draft Report during	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Proceedings on which amendments will be found. (Vol. I, Part II.)	paragraph in Report as finally published. (Vol. I, Part I)
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244	_	Its results	390.	246
245	-	Effect of entry of the States into Federation.	463, 587. * 391-2.	247
246	-	Plan suggested for allocation of taxes on income.	587.	248
247	_	Difficulty of determining equitable basis for division of taxes on income between Federation and Provinces.	392.	249
250	_	Modifications suggested	393, 587. 393.	252
253	-	Scheme of White Paper generally recommended.	393. 393.	255
254	-	Corporation Tax	393. 393–4.	256
255		Provincial surcharges	394.	257
-	255A	Taxes on agricultural incomes	394.	258
257	ļ -·	Excise and export duties	394.	260
258	l –	Terminal and other taxes	394.	261
259	-	Interest of the Provinces in the Federal budget.	394-5, 587.	262
<b></b>	260	Financial adjustments be- tween the Federation and the States.	588.	263
_	260A	Land customs duties imposed by Indian States.	395, 5 <b>88</b> .	264
265	_	Orissa	395,	269

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Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italic* figures.

Number of paragraph in original Dratt Report. (Vol I, Part II)	Number of new or alternative paragraph inserted into original Draft Report during consider- ation	Marginal Note to paragraph in Report as finally published. (Vol. I, Part 1)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
_	265A	Other deficit provinces	396.	270
267	-	General conclusions	396.1	272
268	_	The financial situation in relation to constitutional changes.	588.	273
269	_	The Public Services under responsible government.	398.	274
270		The British element in the Services.	398.	275
271	-	The India Civil Services	589.	276
279	-	Other rights	399, 589. 399.	284
	279A	Special right to compensa- tion for loss of any existing right.	399, 589.	285
280	}	Rights to equitable compensa- tion 3	399.	286
281	-	Further safeguards not necessary.	464.	287
_	282A	Conditions of service of officers appointed by the Secretary of State	<i>5</i> 89-90,	289
	283	Status of the Public Services	464. 400–2.	290

<sup>&</sup>lt;sup>1</sup> The Committee divided.

This marginal note has been changed since the paragraph was first laid before the Joint Committee.

Amendment laid before Joint Committee and postponed.

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-	283A	All-India, Central and Pro- vincial Services are all Crown Services.	464–5. 400	291
	283B	Governor-General and Gover- nors should be, under the Crown, recognised as heads of Central and Provincial Services respectively.	465. 400-1.	292
_	283C	Status and rights of Central and Provincial Services not to be inferior to those All- India Services	465-6. 401, 691.	'293
_	283D	Votability of salaries, etc., of Central and Provincial Services.	466. 401–2.	294
285		Future recruitment for Indian Civil Service and Indian Police.	402.	296
286		Continuance of recruitment by Secretary of State recommended.	402-3. 402-3. <sup>1</sup>	297
287	<b>-</b> .	Position should be reviewed in light of experience.	404, 466. 403-4. <sup>1</sup>	298
293		Future recruitment	591.	304
295		Future recruitment	405.	306
239		Future recruitment	405.	309
299		Question of future resumption of recruitment by the Secretary of State	405.	310

<sup>&</sup>lt;sup>1</sup> The Committee divided.

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Pages of Proceedings on which amendments to paragraphs were not agreed to or postponed are shown in *Italia* figures

Number of paragraph in original Draft Report. (Vol I, Part II.)	Number of new or alternative paragraph into original Draft Report during consideration.	Marginal Note to paragraph in Report as finally published. (Vol. I, Part I.)	Pages of Proceedings on which amendments will be found. (Vol. I, Part II.)	Number of paragraph in Report as finally published. (Vol. I, Part I.)
	299A	English personnel in Forest and Irrigation Services.	466–7. 405.	311
305	-	No special provision required	406, 591. 405.	317
306	_	Claims for pensions by officers appointed by the Secretary of State.	487, 592. 406-7.	318
	306A	Binding nature of obligation in respect of pensions.	592.	319
	307	Family pension funds	408, 520, <b>593</b> ,¹ 606–7.	_
	New		407-8.	
_	paragraph 307	Family pension funds	606-7.	320
308	-	Anglo-Indians and the Services.	467. 409.	321
310	-	The Judges of the Federal Court.	409. 409.¹	323
311		Original jurisdiction of	593.	324
312	-	Federal Court. Appellate jurisdiction of Federal Court.	593-4.	325
314	' <b>-</b>	Advisory jurisdiction of Federal Court.	440.	327
316	-,	Proposal for future establishment of a Supreme Court.	594. 409–10. <sup>2</sup>	.329
317	}	A Court of Criminal Appeal not recommended.	446, 594-5.	330

<sup>&</sup>lt;sup>1</sup> Amendment laid before Joint Committee and postponed.

<sup>2</sup> The Committee divided.

Number of paragraph in original Draft Report (Vol I, Part II)	Number of new or alternative paragraph inserted mto original Draft Report during consideration	Marginal Note to palagraph in Report as finally published (Vol I, Part I)	Pages of Proceedings on which amendments will be found (Vol I, Part II)	Number of paragraph in Report as finally published (Vol I, Part I)
318	_	The High Court Judges	410 440, 446, 467 595 410	331
319	-	Administrative machinery of High Courts	410-11 *	332
	319A	Administrative control of High Courts should remain with Provincial Government	411–12	333
320	_	Federal and Provincial Legis- lation in relation to the High Courts	412, 468 595. 412	334
	320A*	Future constitutional position of High Courts	412-13, 596.	335
	32013	Protection of Judiciary from criticism in Legislatures	596	336
323		Subordinate Judges and mun- siffs	413	339
324	<u> </u>	District judges	596	340
	326	Definition of problem <sup>2</sup> .	450 447–48	342
_	327	The Fiscal Convention	450-1 447-49 *	343
_	328	The Fiscal Convention and the new Constitution	453 597 447-49, 451-3 1	344

<sup>&</sup>lt;sup>1</sup> The Committee divided

This marginal note has been changed since the paragraph was first laid before the Joint Committee

<sup>&</sup>lt;sup>3</sup> Amendments laid before the Joint Committee and postponed

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Number of paragraph in onginal Draft Report (Vol I Part II)	Number of new or alternative paragraph inserted into original Draft Report during consider- ation	Marginal Note to paragraph in Report as finally published (Vol I Part I)	Pages of Proceedings on which amendments will be found (Vol I, Part II)	Number of paragraph in Report as finally published (Vol I, Part I)
-	329	Governor General should have a special responsibility to prevent penal discrimina- tion against British im- ports a	453-4 598 447-50,ª 451-3 ¹	345
	329A	Principles of future trade rela- tions between India and United Kingdom	454	346
-	329B	Discrimination against British trade in India	454–5	347
_	329C	Administrative discrimination	455	348
330	_	Legislative Discrimination	451-31	349
331	_	General considerations	512, 598 455, 598	350
. 332	_	Laws imposing certain condi- tions and restrictions should not apply to British subjects domiciled in the United Kingdom	512 455 698	351
333	_	Companies incorporated in the United Kingdom and in India	456	352
335	-	Shipping	456 456 <sup>1</sup>	354
336	-	Exceptions	456	355

<sup>&</sup>lt;sup>1</sup> The Committee divided

<sup>&</sup>lt;sup>2</sup> This marginal note has been changed since the paragraph was first laid before the Joint Committee

<sup>&</sup>lt;sup>2</sup> Amendments laid before the Joint Committee and postponed

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837	-	Bounties and subsidies	512. 457.	356
<b>33</b> 8	-	Bills discriminatory in fact though not in form.	512, 599. 467, <sup>1</sup> 599.	357
339	]	Practice of professions	513.	358
341	-	Opportunity should be given for conventional arrangements in the future.	607.	360
343	- }	Withdrawal of recognition of Indian Medical diplomas.	599.	362
346		The Indian Medical Service.	458.	365
347	-	A Declaration of fundamental rights impracticable.	420-21.	366
34R		Eligibility for holding public office, etc.	421, 600. 421, 600.	367
349	New paragraph	Expropriation of private property.	513, 600. 421-2.	- Bea
	349		600-601.1	369
_	349A	Special case of grants of land or of tenure of land free of land revenue.	422,602.	370
-	349B	Prior consent of Governor- General or Governor should be required to legislation affecting such grants.	468. 482.	371

## <sup>1</sup> The Committee divided.

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-	349C	The Permanent Settlement.	468-9. 423.	372
	349D	The English Language	423-4.	373 .
351 `	-	Grant of Constituent Powers to Indian Legislatures not yet practicable	424, 602.	375
~	351A	Variation of instrument of instructions in order to transfer greater responsibility to ministers.	424.1	,,,
353	-	Administrative matters	602.	377
354	-	Matters which should be under control of Parhament,	602.	378
355	-	Procedure suggested	602	379
357	-	Resolutions should be subject to certain conditions.	424.	186
361	_	Continuance of Council of India not necessary under responsible Government.	425.	385
362	-	An advisory body proposed.	428. 426.	386
364	_	India Office staff	427. 426-7, <b>*</b> 603.	388
366	-	Indian Reserve Bank Act, 1934	603*. 427 8, 607*.	390
367	•	Certain amendments of Act should require prior sanc- tion of Governor-General.	607.	, 391

<sup>&</sup>lt;sup>1</sup> This paragraph was not inserted.

<sup>\*</sup> The Committee divided.

<sup>&</sup>lt;sup>3</sup> Amendment laid before Joint Committee and postponed.

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369	_	Report of Committee in June, 1933.	469. 428.	393	
<sub>¬</sub> 370	_	Certain matters should be regulated by Constitution Act.	428, 469, 608.	394	
	370A	Disputes between Railway Authority and Indian States Railways.	513, 608.	395	
372	-	Future arrangements	469-70.	397	
374	,	Recommendations	428.	399	
376	_	Advocates-General should be appointed in all provinces.	608.	401	
380	_	Appointment should be made by Governor-General in his discretion.	470, 609. 429.	405	
382	-	Transitory provisions neces- sary, if Provincial Autono- my precedes Federation.	609.	407	
385		Modifications in White Paper proposals recommended.	609.	410	
387		The "Burma White Paper"	<b>429</b> .	412	
388	-	Subjects to be discussed	610.	413	
389	-	Area of Province	429, 610.	414	
390		Physical features	492.	415	
391		Its isolation	429, 610-11.	418	

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392	-	Summary of British connection with Burma.	492.	417
394	-	Burma constituted a Gover- nor's Province.	429, 492.	419
396	<del>-</del>	Both parties desire separation	430.	421
397	-	Separation justified on prac- tical grounds.	430, 493. <i>430</i> .	422
. 399	-	Tariffs and separation	493,	424
400	-	Effect of tariffs on India- Burma trade.	611.	425
403	_	Moderate tariffs not necessarily injurious to trade between the two countries.	430.	428
405	_	Period during which a Trade Convention should continue	493, <b>612.</b> 612.	430
406	-	differee. Statutory provisions recommended.	612. .43#.	431
-	406A	Relief from double income-tax.	493.	432
407		Immigration of Indian labour.	430, 613.	433
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Amendment considered and postponed,
 This paragraph was not inserted.

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## <sup>1</sup> The Committee divided.

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